



KED-Seals Ltd.  
7 Mill Road, Insch,  
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www.ked-seals.co.uk

## KED SEALS LIMITED TERMS AND CONDITIONS OF SALE AND SERVICES

### 1. Interpretation

1.1 In these Conditions:

1.1.1 "the Buyer" means the natural person, firm, company, organisation or public authority who accepts a quotation of the Seller for the sale of the Goods or supply of the Services or whose order for the Goods or Services is accepted by the Seller.

1.1.2 "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.

1.1.3 "Contract" means any contract for the purchase and sale of the Goods and/or the provision of the Services incorporating these Conditions.

1.1.4 "the Goods" means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions.

1.1.5 "the Seller" means KED Seals Limited, a company incorporated under the Companies Acts with Company Number SC495693 and having its registered office at 7 Mill Road, Insch, Aberdeenshire, AB52 6JA.

1.1.6 "Services" means the services to be supplied to the Buyer by the Seller pursuant to a Contract.

1.1.7 "Writing" is a reference to the means of communication set out in the notice Condition 14.

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 Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or the supply of Services in accordance with any quotation issued by the Seller, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which 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. Any other terms and conditions which seek to override or exclude these Conditions will be disregarded.

2.2 The Seller may (in its sole discretion) vary or amend these Conditions by notice in Writing and such variation and/or amendment shall be binding upon the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 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.

2.5 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.

### 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 or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity 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 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damage, 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 of 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.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No quotation which has been accepted by the Buyer or 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. Price

4.1 The price of the Goods and Services 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. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 7 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.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods 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 change in delivery dates, quantities or specifications for the Goods 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.

4.3 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 otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

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

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

## 5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods and services on or at any time after delivery of the Goods and/or the provision of the Services, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event 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.

5.2 The Buyer shall pay the price of the Goods and Services within thirty days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery 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.

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

5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8 per cent per annum above the base rate of The Royal Bank of Scotland plc until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and

5.3.4 charge the Buyer a collection/administration charge of 5% of the sum due and all professional fees and outlays (before and after judgement) reasonably incurred in such collection or attempted collection.

## 6. Delivery of the Goods

6.1 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.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery of the Goods and/or the Services shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller

in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller 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 a whole as repudiated.

6.4 If the Seller fails to deliver the Goods (or any instalment) 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.

6.5 If the Buyer fails to take delivery of the Goods 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:

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

6.5.2 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. Risk and Property

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

7.1.1 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

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has rendered delivery of the Goods.

7.2 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 all other goods sold and/or delivered by the Seller to the Buyer for which payment is then due or which have been ordered or delivered.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's mercantile agent, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business as a mercantile agent to a third party purchaser (acting in good faith) and in the event of such re-sale, the Buyer shall hold any monies received in respect thereof in trust for the Seller and such monies shall be paid to the Seller in settlement of all sums due or to become due to the Seller under the Contract.

7.4 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.

7.5 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8. Warranties and Liability

8.1 Where the Seller is not the manufacturer of the Goods, the Seller shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.

8.2 Subject to the conditions set out below the Seller warrants that at the time of delivery the Goods will (a) correspond with their specification; (b) be free from defects in design, material and workmanship; (c) be of satisfactory quality; and (d) be fit for the purpose for which they were designed or manufactured.

8.3 The above warranty is given by the Seller subject to the following conditions:

8.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.3.3 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 has not been paid by the due date for payment;

8.3.4 the above warranty does not extend to parts, materials or equipment not designed or manufactured by the Seller, 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 to the Seller.

8.4 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 statute or common law are excluded to the fullest extent permitted by law.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 3 days (excluding Sundays) 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 had been delivered in accordance with the Contract.

8.6 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 they are otherwise not as so warranted, is notified to the Seller within 12 months of delivery, the Seller shall promptly, at the Buyer's direction and at the Seller's expense, carry out or arrange to be carried out such work of repair or replacement as necessary to bring the Goods into conformity with the aforementioned warranty, or replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.7 The Buyer shall at the Seller's option either return the Goods (by such means as the Seller shall direct) which are subject to any competent claim under this Condition 8 or

make them available for inspection by a representative of the Seller. If the Goods are to be returned they shall be given an authorisation code number by the Seller which will be prominently displayed on the packaging used in the return. If the claim is accepted following an inspection on return or at the Buyer's premises the Seller will satisfy the claim in accordance with Condition 8.6 and if the Goods have been returned, refund the Buyer in the reasonable cost of transportation.

8.8 **IMPORTANT LIMITATION OF LIABILITY** 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 (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit, loss or deferment of revenue or income, loss of or anticipated loss of or failure to obtain any contract or other business opportunity, loss associated with business interruption or increased cost of working or otherwise), costs, expenses or other claims for compensation whatsoever (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 or their use or resale by the Buyer or the Services, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and the Services, except as expressly provided in these Conditions.

8.9 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 the Services, 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:

8.9.1 Act of God, explosion, flood, tempest, fire or accident;

8.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.9.4 import or export regulations or embargoes;

8.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller, the Buyer or of a third party);

8.9.6 difficulties in obtaining raw materials, labour fuel, parts or machinery;

8.9.7 power failure or breakdown in machinery;

## 9. Indemnity

9.1 If any claim is made against the Buyer that the Goods and/or the Services 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, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, 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, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;

9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.3 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);

9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may 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 endeavours to do);

9.1.5 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

9.1.6 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. Insolvency of Buyer

10.1 This clause applies if:

10.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 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.

11. If this Condition 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 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.

## 12. Export Terms

12.1 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 term 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.

12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

12.3 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 on them.

12.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered to the air or sea port of shipment and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

12.5 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.

## 12 Confidentiality

12.1 Each of the parties to the Contract undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this Contract save that which is:

12.1.1 trivial or obvious;

12.1.2 already in its possession other than as a result of a breach of this Condition;

12.1.3 in the public domain other than as a result of a breach of this Condition; or

12.1.4 required to be disclosed in terms of a (i) valid and effective order issued by a court of competent jurisdiction, or (ii) order by a governmental body, or (iii) under any statute or regulation applicable to the Contractor.

12.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Condition 12.1 above by its employees, agents and sub-contractors.

## 13 Waiver

13.1 The waiver by either party of a breach or default of any of these Conditions by the other party shall not be construed as a waiver of any succeeding breach of the same or other Conditions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## 14 Notices

14.1 Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or facsimile transmission (such facsimile transmission notice to be confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in the purchase order or quotation (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery, (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission) upon the expiration of 12 hours after dispatch.

14.2 Except as otherwise provided herein, service by email shall not be competent.

## 15 Assignment

15.1 The Purchaser shall not be entitled to assign the Contract nor all or any of their rights and obligations hereunder without the prior written consent of the Seller.

## 16 General

16.1 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 not be affected.

16.2 The Contract shall be governed by the laws of Scotland and the Buyer agrees to submit to the non-exclusive jurisdiction of the Scottish Courts.

*KED-Seals Ltd.: 01.03.2015*