

Terms and Conditions of Sale

THE CUSTOMER'S ATTENTION IS DRAWN TO THESE REVISED TERMS DATED MARCH 2010 AND IN PARTICULAR TO THE PROVISIONS OF CLAUSE 6.

1. General

- 1.1 Dichtomatik Limited (hereinafter referred to as "we", "us" and "our") only sells and delivers products on the basis of the following conditions. These apply to all our offers, consultations and other commercial endeavours. Any other condition sought by you the customer (hereinafter referred to as "you" and "your"), whether in writing or verbally, shall not take effect or be in any way binding upon us unless we expressly confirm our acceptance of that condition in writing.
- 1.2 Our quotations do not give rise to any obligation for us to supply any products and therefore do not have any binding effect. A contract for us to supply products does not come into effect and become binding on us until express confirmation of our acceptance of the relevant product order is issued in writing.
- 1.3 Any moulds manufactured at your request shall remain our property even if you have made a financial contribution on a pro-rata basis to the total cost of their manufacture.
- 1.4 When delivering any products to you, a tolerance on the original order quantity of plus or minus 10% is permissible in accordance with normal manufacturing practise in our industry.
- 1.5 Unless otherwise expressly agreed by us in writing, we deliver all products on an Ex Works basis. As such, any products you have ordered will be deemed to have been delivered to you, and the risk in those products will always pass to you, when the relevant products are collected by the applicable freight forwarder, carrier or postal service, even in the event of the products being delivered on carriage-paid delivery terms.

2 Delivery and terms for delivery

- 2.1 Our product delivery lead-times are non-binding estimates only, unless we have expressly confirmed a binding fixed delivery lead-time in writing for any products, and begin to run from the date we issue express confirmation of our acceptance of the relevant product order in writing, but not before all details of the contract to supply the relevant products are completely clarified. Part deliveries of any products ordered are permissible. Our delivery obligations under this condition 2 are subject always to the condition that we are supplied with source materials for the products or the products themselves correctly and on time by our relevant suppliers and we shall not be liable for any delay in delivery of, or failure to deliver, any products arising from any failure by any of our suppliers to do so.
- 2.2 Our product delivery lead-times will be extended for the period of any event of force majeure, including (without limitation) any labour disputes, strikes or lockouts or any other occurrence beyond our control, if that event prevents, hinders or delays the manufacture or delivery of the products in question. We shall not be liable for any breach of contract or inability to perform any of our obligations under these conditions caused by any event of force majeure, even if that event occurs while we are in default of any binding fixed delivery lead-time.

3. Payment Conditions

- 3.1 We reserve the right, by giving written notice to you at any time before delivery of the products, to increase the price payable for the products to reflect any increase in the cost to us of supplying the products that is due to any factor beyond our control (such as, without limitation, foreign exchange fluctuation, currency regulation, alteration of duties or significant increases in the cost of the labour, materials, increased costs of supply enforced by any of our suppliers or other costs of manufacture), any change in the delivery dates or quantities of the products that are requested by you or any delay caused by your instructions or your failure to give us

adequate information or instructions or increased costs of reply enforced by third party suppliers.

- 3.2 Unless otherwise expressly agreed by us in writing, any invoice for any products ordered by you is payable by you within 30 days from the end of the month in which the relevant products were delivered under condition 1(5) above. Your payment of any such invoice must cover the full invoice value, free of all applicable bank charges.
- 3.3 If payment of any invoice has not been effected or has only been partially effected by you before expiry of the relevant 30-day period under condition 3(2) above, we reserve the right to charge you interest on the outstanding amount at the rate of 2% over and above the Bank of England's base lending rate or 7% per annum, whichever is greater. Exercising this right is without prejudice to our right to seek damages for your breach of condition 3(2) and any other rights and remedies available to us in respect of such breach under these conditions, at law or in equity. In the event of any breach of condition 3(2), we are entitled to rescind the contract for supply of the products for which full and timely payment has not been received or only to undertake further product deliveries against prior payment from you or some other form of security acceptable to us.
- 3.4 You shall not be entitled to withhold any payment of, or to exercise any right of set-off against, any amount payable by you under these conditions.

4. Retention of Title

- 4.1 Title in any products delivered to you shall remain vested in us and shall not pass to you until you have made payment in full to us of all sums due to us (i) in respect of those products, (ii) in respect of any other products delivered or otherwise under these conditions and (iii) under any other contracts between you and us. Until such time as we have received all such sums, the products in question must not be pledged in any way by you or transferred as security, you must immediately inform us in the event of any attachment to or impounding of the products or any other equivalent or similar measures being implemented by any third party and you shall be liable for all actions of intervention and associated costs.
- 4.2 For so long as title in any products remain vested in us under condition 4(1) above: (i) we shall be at liberty at any time to retake possession of those products and, for that purpose, you grant us, our agents and employees an irrevocable licence at any time to enter any premises where the products are or may be stored; and (ii) you shall insure those products in the joint names of you and us. If, prior to the passing of title in any such products to you, you shall make any addition or alteration to those products or process or incorporate them in other goods or equipment, ownership of those products, as added to, altered, processed or incorporated, shall remain ours. Should you dispose of any such products, irrespective of their state, you hereby: (i) assign to us (by acceptance of these conditions) all claims and ancillary rights you may obtain by reason of such disposal, such assignment being limited to (but taking precedence over all other rights) the proportional amount of our respective claim to those products (corresponding to the price paid by you for the products disposed of when you obtained them from us); and (ii) undertake to inform your customers, upon our request, of this assignment and to give us all information and documents required for us to claim, exercise and enforce our rights against your customers, and you shall only be entitled to collect the resale price obtained for disposing of such products if we, in our sole discretion, do not revoke such entitlement.
- 4.3 If any products in which title remains vested in us under condition 4(1) above are delivered in a country whose laws do not, or in a restricted way, allow reservation of property, then you are obliged to: (i) provide us with all necessary securities permissible in the respective country; (ii) undertake all necessary measures for the valid reservation of property (such as registration); and (iii) secure



these rights and permissible securities in the respective country. In the event the value of these securities in their entirety exceeds our respective claim over the products by more than 20%, we shall (at your request) release such of these securities as we in our sole discretion consider appropriate to reduce the value of the remaining securities in their entirety to 120% or less of our respective claim.

- 4.4 The foregoing provisions of this condition 4 do not in any way impede or effect the passing of the risk in any products under condition 1(5) above.

5. Defects in Products

- 5.1 Our technical consultations and quotations are worked out with the utmost diligence, taking into consideration all relevant parameters and circumstances known to us at the time of doing so. All our recommendations for the use of any products are given with the best of such knowledge. As such, except where we have expressly guaranteed in writing the suitability of any given product for a particular purpose or use, we cannot give any guarantee as to the suitability of any products for any given use or purpose due to the scope and diversity of application of such products, the different requirements they are designed to meet and the breadth of individual circumstances in which such products are applied or employed. You are therefore required to scrutinise, test and determine the suitability of any of our products for any proposed purpose or use and, subject to condition 4(3), make such technical or other modifications to those products as are necessary for their proposed purpose or use. Please note that the German industrial standard DIN 7716 (5.82) applies to our storage of elastomer articles.
- 5.2 We shall not be liable for any claim for any product defect (including any failure by a product to satisfy a particular purpose or use that we have guaranteed in writing): (i) if you do not inspect the products immediately after arrival at their place of destination and, unless the defect only becomes recognisable upon use of the products or their incorporation into other equipment, start using the products or incorporate the products into other equipment; (ii) if the defect results from or has been caused by any modification you have made to the products or your use of the products with any other goods or equipment that we have not previously authorised or approved in writing for such purpose or use; (iii) if your use of those products, or the mixture or combination of those products with any other goods or equipment, does not cease immediately upon your discovery of the defect; or (iv) resulting from fair wear and tear in the course of the particular purpose or in the circumstances for which those products are being used.
- 5.3 Any claim in relation to: (i) any defect in any products that becomes apparent after an inspection in accordance with condition 5(2) can only be recognised by us if it is reported to us by letter or fax no later than 14 days after the arrival of those products at their place of destination; or (ii) any hidden defect which becomes apparent after use of the products with any authorised or approved goods or equipment can only be recognized by us if it is reported by letter or fax no later than 1 month after the arrival of those products at their place of destination and, only then, if it is reported within 1 week of discovery. In the case of any claim recognised by us under this condition 5(3), you must allow us to have the products in question to be inspected by an independent expert, or immediately provide us with the opportunity for such inspection to be carried out on sufficient samples of the products in question, for independent verification of the defect.
- 5.4 Where, under condition 5(3), any defect in any product is independently verified, your sole remedy (unless otherwise expressly agreed by us in writing) shall be our replacement, free of charge, of the defective products. If we do not replace the defective products within a reasonable time or performance of such remedy is impossible or refused by us, you shall be entitled to: (i) claim a proportionate reduction in price paid for the products; or (ii) terminate the contract and seek compensation under condition 6(2)).
- 5.5 Save as expressly set out in these conditions, all warranties relating to the products, whether express, implied, statutory or otherwise, are hereby excluded to the fullest extent permitted by law.
- 5.6 The warranties given under this clause 5 does not extend to DuPont or any other third party branded parts, materials or products, in respect of which you shall only be entitled to the benefit of any warranty or guarantee as given by the relevant manufacturer to us and subject to any terms and conditions that are applied thereto by such manufacturer. Where we supply DuPont or any

other third party branded parts, materials or products, we shall endeavour to transfer to you the benefit of any such warranty or guarantee given to us.

- 5.7 Where we supply DuPont products to you, we specifically refer you to the information furnished by DuPont in relation to those products that we may have previously supplied to you as part of our quotation process and which is, in any event, available directly from DuPont and/or the website of DuPont.

6. Liability

- 6.1 Nothing in these conditions shall in any way exclude or limit our liability for: (i) death or personal injury resulting from our negligence; (ii) any fraud or fraudulent misrepresentation; or (iii) any other loss or damage that cannot be excluded or limited by law.
- 6.2 **SUBJECT TO CONDITION 6(1) ABOVE AND UNLESS OTHERWISE EXPRESSLY AGREED BY US IN WRITING, OUR ENTIRE LIABILITY IN RESPECT OF ANY PRODUCT DEFECT OR DELIVERY DELAY OR ANY BREACH OF CONTRACT, MISREPRESENTATION OR TORTIOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) SHALL, IN THE CASE OF ALL CLAIMS OR SERIES OF CONNECTED CLAIMS, BE LIMITED TO DAMAGES NOT EXCEEDING THE PURCHASE PRICE OF THE PRODUCTS THAT HAVE GIVEN RISE TO SUCH LIABILITY OR IN CONNECTION WITH WHICH SUCH LIABILITY HAS ARISEN.**
- 6.3 **SUBJECT TO CONDITION 6(1) ABOVE, IN NO EVENT SHALL WE BE LIABLE FOR ANY CLAIMS FOR: (I) LOSS OF PROFITS, BUSINESS, CONTRACTS, REVENUE, ANTICIPATED SAVINGS OR GOODWILL OR ANY OTHER ECONOMIC LOSS; OR (B) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE; WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE.**
- 6.4 Our liability in respect of DuPont or any other third party branded products is limited to the amount that we are able to recover from DuPont or the relevant third party, which may be subject to alternative governing law and jurisdiction and any other contractual or other terms that govern our relationship with that third party. Further we shall have no liability whatsoever in respect of any technical information furnished by us or any third party in respect of any products that we supply and you acknowledge that such information is intended for use by persons having technical skill and that it is given and accepted by you at your own risk.
- ## 7. Place of Performance, Place of Jurisdiction, Law applicable
- 7.1 The place of performance for product delivery and payment under these conditions is Donington House, Riverside Road, Pride Park, Derby DE24 8HX.
- 7.2 These conditions and any contract between you and us shall be governed by English law and both of us hereby submit to the non-exclusive jurisdiction of the English courts. We are entitled, at our sole discretion, to institute legal proceedings in any court of law that has jurisdiction over your main place of business.
- 7.3 The ICC Incoterms 2000 (as amended from time to time) apply to these conditions.
- 7.4 Neither the contract between you and us nor any of these conditions creates any right enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.
- 7.5 If any of these conditions is held to be or becomes void, illegal, invalid or unenforceable for any reason, the application and the validity of the contract between you and us and of the rest of these conditions shall remain unaffected.