



## CALIFORNIA GASKET AND RUBBER CORP.

533 W. Collins Avenue Orange, CA 92867  
(714) 202-8500 • Fax (714) 912-1241

### MANUFACTURING TERMS AND CONDITIONS

#### A. ACCEPTANCE/AGREEMENT

This agreement (Agreement) is comprised of the proposal on the front of this form (Proposal), and these terms and conditions (Terms). Unless initialed by or otherwise agreed to in writing by Seller, any changes by Buyer to the Agreement are deemed to be material and are rejected. By signing the Proposal, Buyer agrees to all of the terms and conditions of this Agreement.

#### B. DELAY

Seller will not be liable for any delay in the delivery or for non-delivery of goods or services (in whole or in part) or any damages to Buyer to the extent caused by circumstances beyond the reasonable control of Seller, its suppliers to Seller, or any other circumstance beyond the reasonable control of Seller. In such event, Seller may allocate production and deliveries among Seller's customers as Seller deems fit. Further in the event of a delay, if Seller, in its sole and absolute discretion, determines that Seller's performance would result in a loss to Seller, as determined under Seller's normal accounting procedures, then Seller may terminate this Agreement (in whole or in part) without any liability to Buyer.

#### C. GOODS; WARRANTIES

All goods will be furnished subject to Seller's standard manufacturing or commercial variations and practice. As to any goods or services provided pursuant to this Agreement, SELLER NEITHER MAKES NOR ASSUMES ANY LIABILITY UNDER ANY WARRANTY, EXPRESSED OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY RELATING TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT. No representation or warranty, express or implied, made by any Seller sales representative or other Seller agent or representative and not specifically expressed in the Agreement is binding upon Seller.

#### D. NOTICE OF DEFECTS; DAMAGES; REMEDIES

Any claim for defective goods or errors or omissions in the services must be made by Buyer to Seller within ten (10) days after Buyer's receipt of the goods, otherwise, Buyer absolutely and unconditionally waives any right to claim the goods or services provided pursuant to this Agreement were defective or contained errors or omissions. If any goods sold to Buyer by Seller are timely claimed by Buyer to be defective, Seller will be given ample opportunity to inspect the goods, or, upon request to Buyer, be furnished with a sample of such goods; and, in such event, Buyer will set aside, protect and hold such goods (without further processing) until Seller has an ample opportunity to inspect and respond to the alleged defectiveness of such goods. Buyer's remedies pursuant to this Agreement, including without limitation any claim arising out of any defect or alleged defect in any goods furnished by Seller to Buyer, will be limited exclusively to the right of repair or replacement of such goods (at Seller's option) or to Seller's repayment of the purchase price to Buyer regarding such goods or services. Seller is not liable to Buyer for any consequential or incidental damages including any of Buyer's lost profits arising out of or related to the sale of any goods or services furnished by Seller to Buyer. No goods will be returned, reworked or scrapped by Buyer without the prior written consent of Seller.

#### E. INVOICES; PAYMENT

All sales made pursuant to this Agreement are subject to the final approval of Seller's credit department. All invoices not paid after the due date will be subject to interest at 18% *per annum* or the maximum allowed by applicable law, whichever is lower. If in Seller's judgment, Buyer's financial condition is such that Seller believes Buyer will not be able to pay the purchase price pursuant to the Agreement, Seller reserves the right to change the payment terms or to require

Buyer to pay some or all of the purchase price in advance of shipping any goods or providing any services under this Agreement.

#### F. PRICES

If the prices for goods provided pursuant to this Agreement have risen prior to the shipment of any of the goods, Seller may adjust the purchase price under this Agreement to Seller's then current prices at the time of shipment. If there is a delay in completion of shipment due to any change requested by Buyer, or as a result of any delay by Buyer in furnishing information required for completion of the Agreement, the purchase price will be equitably adjusted. Prices are F.O.B. carrier's equipment at Seller's factory, and are exclusive of all taxes.

#### G. RISK OF LOSS

Delivery will occur and risk of loss will pass to Buyer upon delivery of the goods to the carrier at the point of shipment. Transportation will be at Buyer's risk and expense, and Buyer agrees that any claim for loss or damage in transit will be made only against the carrier and waived against Seller.

#### H. DELIVERY

Fulfillment of this Agreement is contingent upon the availability of materials. Further, the promised delivery date is Seller's best estimate possible based upon Seller's current and anticipated manufactured capabilities as to when the goods can be completed and shipped.

#### I. CONFIDENTIAL INFORMATION

All designs, drawings, diagrams, formulas, methods, specifications and other materials furnished by or created by Seller or identified as confidential, relating to the goods or services provided under this Agreement are proprietary to Seller. This proprietary information has been developed by Seller at great expense, and contains or are Seller's trade secrets. Buyer may not reproduce or distribute the Seller's proprietary information without Seller's prior written consent, which may be withheld in Seller's sole and absolute discretion. Any proprietary information received by Buyer from Seller will be deemed confidential, and Buyer will exercise reasonable care to hold such information in confidence.

Any information received by Seller from Buyer will not be deemed to be confidential and or to involve any trade secrets, unless Buyer's has clearly identified it as confidential and a duly authorized officer of Seller has signed a confidentiality agreement regarding such information. Salesmen and other representatives of Seller are not authorized to sign any confidentiality agreements on behalf of Seller or to accept any information from Buyer in confidence.

#### J. TERMINATION FOR CONVENIENCE

Buyer may terminate this Agreement by giving Seller thirty (30) days' prior written notice, which notice (if applicable) will include the disposition of any Buyer inventory currently in the possession of Seller. If the termination is due to an alleged breach by Seller, Seller will have 15 days from Seller's receipt of the termination notice to cure any breach. If the Agreement is terminated, Buyer will pay Seller an amount equal to (1) the purchase price for all goods or services completed prior to the date of termination; plus (2) the cost to Seller for materials purchased but not used by Seller at the time the Agreement is terminated; plus (3) Seller's profit (not to exceed 15%); provided, however, the termination payment will not exceed the purchase price set forth in the Agreement, but not be less than \$250. If Buyer does not advise Seller how to dispose of any Buyer inventory in Seller's possession by the date this Agreement is terminated, Seller may continue to store the inventory for Buyer, at Buyer's sole cost and expense, or to dispose of the inventory at the sole and absolute discretion of Seller.

#### **K. TEST GOODS/SAMPLES**

Test goods or samples supplied by Seller to Buyer are solely for the purpose of evaluating the suitability of such goods or samples for their potential use and, as such, the goods or samples are not intended to serve as warranties of any kind, either expressed or implied, regarding the final goods or services provided pursuant to this Agreement.

#### **L. BUYER FURNISHED MATERIALS, TOOLING AND/OR EQUIPMENT**

Seller assumes no responsibility for material, tooling, equipment, process and labor provided by Buyer to Seller, and all responsibility for damages and claims remain with the Buyer and are waived by Buyer against Seller. Seller will store (but not insure) Buyer's tooling and equipment upon written request from Buyer and will be subject to Seller's inspection and acceptance. Seller will in no way be responsible for normal wear and tear, dimensional stability, returned and re-shipped tooling and customer furnished tooling and equipment. Seller will maintain adequate storage placement of Buyer's tooling.

#### **M. COLLATERAL**

Seller may hold as collateral for payment of the purchase price all goods, services, tooling, material and equipment for any unpaid invoices due from Buyer to Seller. Seller will release the collateral upon receipt of certified funds from Buyer. In no event will the collateral exceed the amount due, excluding interest, service charges and collection costs.

All payments by Buyer to Seller will be made at 533 W. Collins Ave., Orange, California 92867.

#### **N. PROTOTYPE PROCESS FOR NEW GOODS**

Notwithstanding anything contrary in this Agreement, Buyer is highly recommended to use prototyping to confirm new designs, processes, and materials prior to the production tooling of a large number of the goods. If Buyer does not utilize the prototype process and instead proceeds directly to production tooling, it is at Buyer's sole risk and Buyer waives all liability for any failure of the goods to meet requirements or to perform to any expectations against Seller.

#### **O. BUYER FURNISHED SAMPLES.**

If Buyer furnishes a sample part for production by Seller, Seller will use its best efforts to produce a part that matches the sample as closely as possible. However, in the absence of Buyer furnished designs and/or specifications regarding the sample, Buyer acknowledges and understands that certain educated assumptions will be made by Seller regarding the Buyer furnished sample's characteristics, including but not limited to its mean, dimensions, tolerances, specific material properties, etc, that may result in the produced goods not functioning as intended. Seller will use its best tooling efforts to produce goods from the Buyer furnished sample; provided, however, Buyer has the sole responsibility for any additional costs or expenses incurred by Seller to make all necessary adjustments to changes to the tooling in order to produce the goods from the Buyer furnished sample.

#### **P. ACKNOWLEDGEMENT**

Buyer agrees to sign and return the Agreement prior to Seller commencing any work under the Agreement. Until the Agreement is signed by the Buyer, Seller may delay commencement of the work. Buyer will be deemed to have agreed to the Agreement upon giving Seller an oral acceptance or oral or written notice to proceed.

#### **Q. RISK ALLOCATION**

Unless this Agreement is terminated for Seller's material breach, if Buyer prevents or frustrates Seller's full performance under this Agreement, then Buyer shall release and indemnify Seller and its affiliated entities and individuals to the fullest

extent allowed by law from and concerning any and all claims, costs, losses and/or liability concerning or related to the uncompleted services. Buyer shall to the fullest extent allowed by law, and in addition to Seller's common law rights, release and indemnify Seller and Seller's affiliated entities and individuals, if any, and their respective affiliated entities and individuals, concerning any and all claims, liability, expenses and/or losses related to the Agreement (including attorneys and expert fees incurred and the value of professional time expended to address claims or problems) provided, however, that this indemnification shall not apply to any indemnitee to the extent of that indemnitee's active negligence or willful misconduct. Further and in any event, Buyer agrees to limit the total aggregate liability concerning or related to the Agreement of Seller and Seller's affiliated entities and individuals, if any, and their respective affiliated entities and individuals, on any and all legal and equitable theories and concerning all kinds and causes of loss to the fullest extent allowed by law as to Buyer and its affiliated entities and individuals, contractors and successors and assigns, to the lesser of twice the amount of Seller's fee received for the Project or fifty thousand dollars, and waives any right to impose any legal liability concerning the Agreement against Seller or its subconsultants' affiliated individuals.

#### **R. MISCELLANEOUS PROVISIONS**

This Agreement supersedes all negotiations and prior agreements concerning the parties and is intended as a complete and exclusive statement of the entire agreement between Buyer and Seller concerning the goods and services to be provided pursuant to this Agreement. This Agreement may be modified only by a subsequent written agreement. This Agreement is being entered into and will be performed in Orange County, California; and it shall be interpreted and enforced under and pursuant to the laws of the State of California, with any unarbitrated disputes being resolved in the Orange County, California court system or in a federal court sitting in California as may be appropriate. No party may assign this Agreement or any related rights or claims without the express written consent of the other. In the event that Buyer is unable to meet its financial obligations pursuant to this Agreement, then those entities or individuals who control Buyer will accept personal responsibility for those obligations. Any and all actual or alleged causes of action concerning any services rendered pursuant to this Agreement, including without limitation those for indemnification, shall be deemed to have accrued for purposes of any statutes of limitation as of the date of Seller's last invoice concerning the Project. No failure to exercise or delay in exercising any right under this Agreement shall be construed as a waiver, and no waiver of a breach of any term of this Agreement shall be construed as a waiver of a subsequent breach of the same or other terms. In the event of any claims or disputes concerning this Agreement and/or the goods or services, the prevailing party will be entitled to its attorneys fees and costs. Buyer waives any right to recover consequential or economic damages from Seller and Seller's affiliated entities and individuals concerning this Agreement or its termination. In the event that this Agreement is for any reason terminated, then its risk allocation and indemnity provisions shall remain in full force and effect. In the event that any provision of this Agreement shall be prohibited by law, then the subject provisions shall not be void, but rather shall be interpreted as operating only to the fullest extent allowed by law; and in the event that any provision of this Agreement shall be partially or totally invalid or unenforceable, then the remaining provision shall remain valid and binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their affiliated entities, successors and assigns; but otherwise is not intended to bestow any rights on any third parties.