

## Terms and Conditions of Sale

### 1. The Contract

These conditions apply to all contracts between The Rubber Company Limited ('Sellers') and any person, firm or company ('Buyers') for the supply of Goods or work completed by Sellers. These conditions underpin any contract and will override Buyer's terms. Each sale contract between the Seller and the Buyer is referred to below as the 'contract'.

### 2. Variation of terms

Any variation to these conditions require written documentation signed by the Seller.

### 3. Separate contracts

Following the Seller's acceptance of a supply contract, multiple orders placed by Buyers will be considered as separate contracts. In the event of more than one contract being processed simultaneously, any arising questions, dispute or issue in respect of one contract, shall not affect in any way the performance of any other contract. The Buyer shall not be entitled to exercise any counter claim in relation to other contracts regardless of any claim arising pertinent to another specific contract.

### 4. Cancellation

Orders may not be cancelled in whole or in part without the prior written agreement of the Seller.

### 5. Terms of payment

5.1 Unless otherwise agreed in writing, or in event of a pro-forma contract, the contract price is strictly

payable 30 days following date of the invoice. The Buyer shall not be entitled to withhold part or full payment of monies due to the Seller by reason of any counterclaim or allegation of incorrect or defective Goods or work or for any other alleged reason without written Seller agreement.

5.2 In case of failure to pay when stipulated, all sums outstanding shall become payable immediately.

5.3 In the event of overdue payments or arrears the Seller shall be entitled (without prejudice to any other rights it may have) to suspend further deliveries until payment is received, whether or not such deliveries are due under the same contract or other contracts.

5.4 The Seller reserves the right to charge interest on any overdue payments at the rate of four percent (4%) per annum above the base lending rate for the time being of National Westminster Bank. Interest may be applied both before and following judgement and will be calculated from the due date of payment until the date on which payment is received by the Seller.

5.5 If any payments are overdue or the Buyer becomes subject to bankruptcy or, if a limited company satisfies any statutory eligibility for winding up by the Court or voluntarily (other than for amalgamation or reconstruction purposes), then, without prejudice to any other remedies available to the Seller under this Clause 5, the Seller may cancel other contracts with the Buyer, and by its agents enter the Buyer's premises to recover all Goods in respect of unpaid goods.

### 6. Estimates

Estimates for Goods to be supplied by the Seller to the Buyer are given in good faith, based on the relevant costs at the date of the estimate. Unless otherwise agreed, such estimates are subject to amendment after acceptance to meet any fall or rise in such costs. Errors or omissions on such estimates shall be chargeable to the Buyer.

### 7. Title and risk

7.1 Goods supplied shall be at the Buyer's risk following delivery.

7.2 Following delivery, property in the Goods shall not pass from the Seller until:

7.2.1 the Buyer shall have paid the contract price and VAT as applicable in full; and

7.2.2 no other sums are overdue for payment from the Buyer to the Seller

7.3 Until property of goods passes to the Buyer in accordance with Clause 7.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as Bailee for the Seller.

7.4 Notwithstanding that goods remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business for the purpose of payment to the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer at the Buyer's risk. Until property in the Goods passes from the Seller any proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be deposited into any

unauthorised overdrawn bank accounts, remaining identified as the Seller's money.

7.5 The Seller shall be entitled to recover the contract price of goods plus VAT notwithstanding that property in any of the Goods has not passed from the Seller.

7.6 Until such time as property of goods passes to the Buyer, upon request the Buyer must return goods that remain unsold or unused by the Buyer. In event of non-compliance of this clause, the Seller may enter Buyer's premises where goods are stored for the purpose of repossession. In event of such a request, the rights of the Buyer under Clause 7.4 shall cease.

7.7 The Buyer shall not pledge or use for security any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

7.8 The Buyer shall be responsible for insurance of goods to the full contract price against risk until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

7.9 Where goods are stated in the contract to be returnable by the Buyer, these remain the property of the Seller at all times. Loss or damage to goods occurring on the Buyer's premises or work sites subsequent to return will be for the Buyer's account.

## **8. Indemnity against infringement of patents, copyright or similar**

The Seller is indemnified by the Buyer against any costs, claims or expenses arising from any action for infringement or alleged infringement of patents, trademarks, registered designs, copyrights or any

other claim. This indemnity shall extend to any amounts paid by the Seller for legal advice and in settlement of any claim.

## **9. Carriage**

Prices quoted are ex-works and exclusive of all applicable VAT unless otherwise agreed. Transport costs offered are subject to change following date of offer based on prevailing costs.

## **10. Delivery**

10.1 Delivery dates and production lead times quoted by the Seller are given in good faith but the Seller shall not be liable for failure to deliver on specified dates.

The Buyer shall not be entitled to cancel the contract if the Seller fails to make delivery on any given date.

10.2 Any delivery time specified may be extended by any period during which the production or delivery of the goods or other work by the Seller in connection with the contract is delayed due to any circumstances beyond the Seller's control. Such circumstances are not limited to but may include any form of transportation non-conformance, government or financial institution intervention, industrial action, act of God, flooding or breakdown of plant or machinery.

## **11. Notification of claims**

11.1 Any claims made by the Buyer for defective goods shall be received in writing within 28 days of delivery. Beyond this date the Seller shall be entitled to reject any claim. In event of any alleged defect not being immediately apparent, if allowed by the Seller in a reasonably longer period, defective goods shall be returned at the Buyer's cost to the Seller.

11.2 Any claim for non-delivery of part or all goods shall be made in writing within three days of receipt or expected receipt of goods. No liability may be passed to the Seller arising from any delay in

transport. In event of the Seller, in its sole discretion, acknowledging that Goods are defective then it may at its discretion either:

11.2.1 rectify defective goods for return to the Buyer; or

11.2.2 supply replacement goods to the Buyer; or

11.2.3 refund to the Buyer payment made by the buyer in respect of the defective Goods.

11.3 The Seller shall not be liable for any claims made by the Buyer regarding defective goods in the absence of any written claim being notified to the Seller within the time limits set out in this Clause 11.

## **12. Shortages and overages**

The Seller reserves the right to deliver five percent more or less than the contract quantity of goods, with excesses or reductions charged or deducted on a pro rata basis.

## **13. Technical advice**

Any technical advice is supplied to the best of the Seller's knowledge based on its research work and experience and to be used as guidance. The advice is given in good faith and does not constitute any guarantee or recommendation for suitability. The Rubber Company cannot be held liable for any damage caused by incorrect installation. Buyers are responsible for undertaking their own investigations and tests and hold responsibility for the observance of legal and official regulations covering the use of goods. The Seller reserves the right to change the technical information herewith without notification or prior agreement.

## **14. Warranty and limitation of liability**

The Seller warrants that goods are produced within the accepted tolerance levels in compliance with the standard specifications stated in quotations and

contracts of sale. Unless otherwise specified, the Seller does not warrant the fitness of the Goods for any particular purpose, regardless of knowledge of the purpose. No such warranty is to be implied from the name or description under which the goods are sold, nor for any advice or recommendation given by the Seller, or its employees or agents. Furthermore, other conditions, guarantees or warranties whether expressed or implied by statute, common law or otherwise including conditions, guarantees or warranties as to quality, fitness for purpose or description of the goods or their life of wear under any conditions whether known or made known to the Seller or not are, to the fullest extent permitted by law, hereby excluded. The Seller's liability for any and all direct loss or damage resulting to the Buyer from defects in the Goods or any other cause shall be limited to the purchase price of the quantity of goods regarding any such loss or damage claimed. The Seller shall be under no liability to contract or in tort for any loss or damage or personal injury arising directly or indirectly out of the supply or use of goods other than death or personal injury resulting from negligence of the Seller within the meaning of Section 1 of the Unfair Contract Terms Act 1977.

#### **15. Safety instructions**

The Buyer undertakes to ensure compliance by his employees or agents with any safety precautions or instructions for safe handling given by the Seller.

#### **16. Interpretation**

Any contract between the Seller and the Buyer shall in all respects operate and be construed as an English contract and be governed by English law.

#### **17. General**

17.1 Any notice to Buyer or Seller required under these conditions shall be in writing addressed to the relevant party at its registered office or principal place of business or such other address as may have been notified in the contract.

17.2 No waiver by the Seller of any breach of the contract by the Buyer shall be construed as a waiver of any subsequent breach of the same or any other provisions.

17.3 If any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part of the validity of the other provisions of these conditions shall not be affected thereby.

17.4 Any dispute arising under and in connection with these conditions shall be referred to an arbitrator appointed by agreement or (in default) nominated on the application of either party to the President for the time being of the Law Society.