

1. **DEFINITIONS**
In these Terms the following expressions shall have the following meanings:
"Business day" means a day other than a Saturday, Sunday or public holiday in England and Wales;
"You/Your" means the person, firm or company who accepts Our written quotation for the sale of the Goods or whose written order for the Goods is accepted by Us; "We/Us/Our" refers to the company named Berwin Rubber Company Limited registered in England and Wales under number 0024814 whose registered office is at Broadway Grove Lane, Industrial Estate, Skive SK15 4JL on behalf of itself and its subsidiaries;
"Our Premises" shall mean the premises mentioned in Our quotation or other contractual document or if not so mentioned shall mean Our works at Our registered office;
"Contract" means the contract for the sale and purchase of the Goods;
"Goods" means the products (including any instalment of the Goods) agreed in the Contract which We are to supply in accordance with these Terms;
"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;
"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between You and Us ("the parties") from time to time; and
"writing" and any similar expression, includes facsimile transmission, electronic mail and comparable means of communication.
2. **BASIS OF THE SALE**
We shall sell and You shall purchase the Goods in accordance with Our written quotation (if accepted by You), or Your order (if accepted in writing by Us), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms 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 You.
- 2.2 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the parties.
- 2.3 In entering into the Contract You acknowledge that You do not do so on the basis of or in reliance upon any representation, warranty or other term whether or not in a later document or purporting to exclude or supersede the Terms which is not confirmed in writing by Us, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.4 Schedules issued by Us shall form an integral part of any contract.
- 2.5 Unless otherwise agreed in writing the period of the contract shall be for the life of the Goods as anticipated when the order was accepted.
- 2.6 Goods sold by Us to You are for Your sole use or consumption and You shall not re-sell the Goods to any third party without Our prior written consent provided that You may convert the Goods into or incorporate the Goods in other products to re-sell.
- 2.7 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 Us shall be subject to correction without any liability on Our part.
3. **ORDERS, SPECIFICATIONS, TECHNICAL INFORMATION**
Notwithstanding that We may have given a detailed quotation no order submitted by You shall be deemed accepted by Us unless and until confirmed in writing by one of Our authorised representatives.
- 3.2 You shall be responsible to Us for ensuring the accuracy of the terms of any order (including any applicable specification) that You submit to Us, and for giving to Us any necessary information relating to the Goods within a sufficient time to enable Us to perform the Contract in accordance with its terms.
- 3.3 You shall be responsible for ensuring that the Goods will be fit for the purpose for Your intended use regardless of whether You make such intended use known to Us.
- 3.4 The quantity, quality and description of the Goods and any specification for them shall be as set out in Our quotation (if You accepted it) or Your order (if We accept it).
- 3.5 Any advice or recommendation which We (or any of Our employees or agents) give to You, as to storage, application or use of the Goods which is not confirmed in writing by Us is followed entirely at Your risk, accordingly We shall not be liable for any such unconfirmed advice or recommendation.
- 3.6 If We are to manufacture or apply any process to the Goods in accordance with a specification submitted by You, You shall indemnify Us against all loss, damages, costs and expenses awarded against or incurred by Us in connection with, or paid or agreed to be paid by Us in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of a third party which results from Our use of Your specification.
- 3.7 No cancellation of the order by You is permitted except where agreed by Us in writing. In such case, You shall indemnify Us against all expenses incurred up to the time of such cancellation together with a sum of 10% of the contract price, by way of liquidated damages, which shall be paid by You to Us forthwith.
4. **PRICES**
4.1 The price of the Goods shall be Our written quoted price. Unless otherwise stated by Us in writing, all prices quoted are valid for 30 days only or until earlier acceptance by You, after which time they may be altered by Us without giving notice to You.
4.2 We reserve the right, by giving written notice to You at any time before delivery, to increase any agreed price relating to the Goods to reflect any increase in the cost to Us which is due to any factor beyond Our control (such as, without limitation, any foreign exchange fluctuation, 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 You request, or any delay caused by any instructions You give to Us or Your failure to give to Us adequate information or instructions.
4.3 Unless otherwise agreed in writing between the parties, all prices are given by Us on an ex works basis, and where We agree to deliver the Goods otherwise than at the Our Premises, You shall be liable to pay Our charges for transport, packaging and insurance.
4.4 The price is exclusive of any applicable value added tax or other tax or duty which You shall be additionally liable to pay to Us.
5. **TERMS OF PAYMENT**
5.1 Subject to any special terms agreed in writing between the parties, We may invoice You for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by You or You wrongfully fail to take delivery of the Goods, in which event We shall be entitled to invoice You for the price at any time after We have notified You that the Goods are ready for collection or (as the case may be) We have tendered delivery of the Goods.
5.2 Unless otherwise agreed in writing all sums become due and payable (without any withholding, deduction or set off on any account whatsoever) under these terms and conditions within 30 days from the end of the month in which the Goods are delivered. 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 Unless otherwise agreed, payment shall be made by electronic bank transfer into the account specified by Us from time to time.
5.4 We reserve the right at any time to require payment from You in cleared funds in advance or on delivery of the Goods, having given notice to You in writing.
5.5 No payment shall be deemed to have been received until We have received cleared funds.
5.6 If the Goods are delivered in instalments We shall be entitled to invoice each instalment as and when delivery thereof has been received. The time of payment of the price shall be of the essence of the Contract. In respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments or other default on Our part.
5.7 If upon the terms applicable to any order the price shall be payable by instalments or if You have agreed to take specified quantities of Goods at specified times a default by You of the payment of any due 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.
5.8 If You fail to make any payment on the due date then, without limiting any other rights it may have, We shall be entitled under the Late Payments of Commercial Debts (Interest) Act 1998 to charge interest (both before and after any judgement) on the outstanding amount on a daily basis from the due date until the outstanding amount is paid in full.
6. **DELIVERY, INSPECTION AND ACCEPTANCE**
6.1 Delivery of the Goods shall be made by You collecting the Goods at Our Premises at any time after We have notified You that the Goods are ready for collection or, if We agree to some other place for delivery, by Us delivering the Goods to that place.
6.2 We give all times or dates for delivery of the Goods in good faith however time of delivery shall not be of the essence of any contract nor shall We be under any liability for delay whether or not beyond Our reasonable control.
6.3 We shall have the right to make delivery by instalments of such quantities and at such intervals as We may decide, and any express or implied provision in the Contract shall be in addition to and not in derogation of this right.
6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and Our failure to deliver any one or more instalments in accordance with these Terms or any claim by You in respect of any one or more instalments shall not entitle You to treat the Contract as a whole as repudiated.
6.5 If for any reason You are unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery We may at Our sole discretion, without prejudice to Our other rights:
a) store the Goods until actual delivery and charge You for the reasonable costs (including insurance) of storage; or
b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to You for the excess over the price under the Contract or charge You for any shortfall below the price under the Contract.
6.6 You shall be obliged to accept delivery at any time before the Contract is determined or instalment cancelled.
6.7 Deviations in quantity of Goods delivered (representing not more than 10% of value, weight or quantity from that stated in the order) shall not give You any right to reject the Goods or to claim damages but You shall be obliged to accept and pay at the contract rate for the quantity of the Goods delivered.
7. **EXPORT TERMS**
7.1 Unless the context otherwise requires, any term or expression which is defined or given a particular meaning by the provisions of Incoterms shall have the same meaning in these terms and conditions if there is any conflict between the provisions of Incoterms and these terms and conditions, the latter shall prevail.
7.2 Where the Goods are supplied for export from the United Kingdom, the provisions of clause 7 shall, subject to special terms agreed in writing between the parties, apply notwithstanding any other provision of these terms and conditions.
7.3 You shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for payment of any duties on them.
7.4 Unless otherwise agreed in writing between the parties, the Goods shall be delivered FOB the air or sea port of shipment and the Company shall be under no obligation to give notice under s.32(3) of the Sale of Goods Act 1979.
7.5 You shall be responsible for arranging for testing and inspection of the Goods at Our Premises before shipment. We shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and is made after shipment, or in respect of any damage during transit.
7.6 Payment of all amounts due to Us shall be made by irrevocable letter of credit opened by You in Our favour and confirmed by a bank acceptable to Us or, if We have agreed in writing on or before acceptance of Your order to waive this requirement, by acceptance by You and delivery to Us of a bill of exchange drawn on You payable 60 days after sight to Our order at such bank and branch as may be specified in the bill of exchange.
8. **RETURNS**
8.1 Goods supplied in accordance with the Contract cannot be returned without the prior written consent of one of Our authorised representatives. Daily authorised returns shall be sent to Our Premises at Your expense.
9. **PASSING OF TITLE AND RISK**
9.1 Risk of damage to or loss of the Goods shall pass to You:
(a) in the case of Goods to be delivered at Our Premises, at the time when We notify You that the Goods are available for collection; or
(b) in the case of Goods to be delivered otherwise than at Our Premises, at the time of delivery or, if You wrongfully fail to take delivery of the Goods, the time when We have tendered delivery of the Goods.
9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to You until We have received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Us to You for which payment is then due.
9.3 Until such time as the property in the Goods passes to You, You shall hold the Goods as Our fiduciary agent and bailee, and shall keep the Goods in substantial repair, condition and separate from Your other goods and those of third parties and properly stored, protected and insured and identified as Our property, but You may resell or use the Goods in the ordinary course of Your business.
9.4 If the Goods shall become converted into or incorporated with other products while We retain title in them the ownership in any such other products shall vest in Us as if solely and simply the Goods until such payment or resale as aforesaid. In the event that the Goods are converted after such conversion, incorporation or use, We reserve the right to sever and remove the same. We may revoke Your power of resale or use at any time until property in the Goods passes.
9.5 We shall be entitled to require the sale of the Goods or such last mentioned products in order to recoup the money owed to Us. In the event of any resale, Our beneficial interest shall attach to the proceeds of sale or other such disposition thereof so that such proceeds or any claim thereof shall be assigned to Us and until the subject of such disposition shall be held on trust for You by You who will stand in a strictly fiduciary capacity in respect thereof. Until property in the Goods has passed to the purchaser of the proceeds of sale or otherwise of the Goods shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as Our money.
9.6 In the event of failure to pay the price in accordance with the contractual obligations We shall have power to re-sell the Goods or other products after reasonable notice. Such power is additional to any other power of sale arising by operation of law or implication or otherwise.
- 9.7 We reserve the right to enter premises You own or control to inspect the goods and to take possession of the goods for the sale of the Goods in Your hands or those of Your liquidator or other person.
10. **WARRANTIES**
10.1 Subject to the following provisions, We warrant that the Goods will correspond in all material respects with their specification at the time of delivery.
10.2 We give the above warranty subject to the following conditions:
(a) We shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification applied to us by You;
(b) We shall be under no liability in respect of any defect arising from fair wear and tear, inappropriate storage, inappropriate usage, willful damage, negligence, abnormal working conditions, failure to follow Our instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Our written approval;
(c) We do not warrant that the Goods are fit for any purpose for which You intend the Goods to be used, whether We are actually deemed, assumed or ought to be aware of such intention;
(d) We shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the Goods has not been paid by the due date for payment;
(e) The above warranty does not extend to parts, materials or equipment which We do not manufacture, in respect of which You shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Us.
10.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
10.4 No warranty or representation is given by Us:
(a) that the Goods do not infringe any patent, copyright, design, trademark or other industrial or intellectual property right of any other person; and
(b) as to the suitability of the Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were communicated to Us.
11. **INSPECTION**
11.1 You shall, wherever possible, inspect the Goods on delivery or on collection and commence any necessary laboratory tests on the Goods within 7 days of delivery.
11.2 No claim for non-delivery, partial loss or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract will attach to Us unless You notify Us of such claim in writing. The Goods are paid for, returned to Us, and for claims for non-delivery, partial loss or damage, a copy is sent to any independent carrier if a third party delivered the Goods.
(a) Within 7 days of delivery for partial loss damage or non-compliance with the Contract (including a claim that Goods do not fit for purpose if We have given any such assurance).
(b) In the case of a serious defect in material or workmanship, within 7 days of the date when a defect appears or ought reasonably to have been discoverable if it appears within three months of delivery.
(c) Within 7 days of receiving test results for partial loss or non-compliance with the Contract in relation to errors which could only be identified through laboratory testing; or
(d) within 10 days of the date of the invoice for non-delivery.
12.2 In accordance with clause 12.1, no claim flowing from defective Goods shall attach to Us if We do not have the opportunity to inspect the Goods before they are used, re-sold or modified.
12.3 The risk of accidental loss whilst the Goods are being returned to Us will be Yours.
12.4 Unless You give Us notice pursuant to clause 12.1:
(a) The Goods shall be deemed to be in respect of all non-compliance in accordance with the Contract and You shall not be entitled to reject the Goods;
(b) subject to clause 12.5 below, We shall have no liability for any defect or failure;
(c) You shall pay the Price as if the Goods had been delivered in accordance with the Contract.
12.5 We undertake to credit You for the full price paid by You for the Goods or to repair or to supply free of charge at the place of delivery specified by the Buyer for the original Goods a replacement of the Goods manufactured or processed by Us in which a serious defect in material workmanship appears within three months of delivery PROVIDED THAT in any case:
(a) The Goods have been accepted and paid for and were manufactured or processed by Us, and
(b) You inform Us within 7 days of the date when such defect appears or ought reasonably to have been discovered and return the defective Goods carriage paid to Our Premises.
12.6 In the event of a valid claim for non-delivery, partial loss, short delivery of Goods, damage or non-compliance with the Contract We may, at Our option, either reprocess or replace the Goods (or the part in question) at Our expense or, at Our sole discretion, refund You the price of the Goods (or a proportionate part of the price), in which case We shall have no further liability to You.
12.7 Except in respect of death or personal injury caused by Our negligence We shall not be liable to You by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, under or the express terms of the Contract (except in the case of fraud on Our part), for: (a) loss of profit; (b) loss of business; (c) depletion of goodwill; (d) for any indirect, special or consequential loss, damage or cost; (e) expenses; or (f) other claims for compensation whatsoever (whether caused by Our negligence, or that of Our employees, agents or otherwise), which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or Your use or resale of them.
12.8 Our entire liability for any claim or all claims flowing from one act, under or in connection with the Contract shall not exceed £10,000 or the price paid for the Goods (or where the Goods are delivered in instalments, the price of the Goods in the relative instalment) whichever is the greater, except as expressly provided in these Terms.
12.9 Notwithstanding that a sample of the Goods may have been exhibited to and inspected by You or results of standard tests upon a sample furnished to You it is hereby declared that such sample was so exhibited and inspected or tested solely to enable You to judge for Yourself the quality of the bulk and not so as to constitute a sale by sample. You take the Goods at Your own risk as to their corresponding with the sample or as to their quality conditions or suitability for any purpose.
12.10 In the case of Goods manufactured by a third party, We will pass to You any benefits under any warranty given by Our supplier provided You have accepted and paid for the Goods.
12.11 Nothing herein shall impose any liability upon Us in respect of any defect in the Goods arising out of any acts, omissions, negligence or default of You or Your servants or agents including in particular but without prejudice to the generality of the foregoing any failure by You to comply with any of Our recommendations as to storage and handling of the Goods.
12.12 Where the Goods are first delivered by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and You shall be bound to accept delivery thereof.
13. **DEFAULT OR INSOLVENCY OF BUYER**
If:
(a) You fail to accept the Goods or any instalment or part instalment thereof;
(b) You fail to pay any sum due to Us on the due date of the proper time;
(c) You default or commit any breach of any other obligation under the Contract;
(d) You make a voluntary arrangement with Your creditors or (being an individual or firm) become bankrupt or (being a company) become subject to an administration order or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
(e) an embarguer takes possession of any of Your property or assets, or a receiver is appointed for You;
(f) You cease, or threaten to cease, to carry on business;
(g) anything analogous to any of the events specified in clauses 13(d) to 13(f) affects You under the laws of any applicable jurisdiction; or
(f) We reasonably apprehend that any of the events mentioned above are about to occur and notify You accordingly, then, without limiting any other right or remedy available to Us, We may, by notice in writing, immediately deem You to have repudiated the Contract and cancel it and any other contracts between the parties and/or suspend any further deliveries to You under the Contract or any other contracts between the parties or demand payment of all outstanding balances owing by You to Us, whether then due or not.
14. **FORCE MAJEURE**
14.1 We shall not be liable to You or deemed to be in breach of the Contract by reason of any failure or delay in delivering the Goods if it is due to any cause beyond Our control. A non-exhaustive illustration of such circumstances follows: explosion, flood, fire, accident, act of terrorism, war or threat of war, regulations or prohibitions, import or export regulations or embargoes, strikes, lock-outs or other industrial actions, trade disputes (whether involving Our employees or of a third party), difficulties in obtaining raw materials or supplies (except at increased prices), power failure or breakdown in machinery.
14.2 If the circumstances listed in 14.1 occur, We shall give notice to You as soon as reasonably practicable, if such circumstances continue for 3 months after such notice, We may give written notice to You cancelling the contract. We shall return any payments made in advance, but shall not be liable for any other claims whatsoever from You.
15. **SUB-CONTRACTING**
We may but You may not assign, transfer or sub-contract the performance of any or all contractual obligations and assign or transfer any or all rights under or relating to the Contract.
16. **GENERAL**
16.1 In these Terms: (i) the headings are for convenience only and shall not affect interpretation; (ii) unless otherwise provided, references to clauses are to clauses of these Terms; and (iii) a reference to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time; These Terms, together with any terms agreed in writing between the parties from time to time, constitute the entire agreement between the parties, superseding any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
16.2 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Such notices shall take effect: if delivered by hand, when left at the address for service; if delivered by first class post to an address within the UK, 2 business days after posting; if delivered by first class post to a party outside the country of posting, 4 days after posting; if given by facsimile, at the time of transmission provided that a confirming copy is set by first class post to the other party within 1 business day of transmission.
16.3 No waiver by Us of any breach of the Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.
16.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
16.5 A person who is not party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
16.6 Any disputes arising in connection with the Contract shall promptly be referred to the managing directors of each party who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of being notified.
16.7 The Contract shall be governed by the laws of England, and You agree to submit to the non-exclusive jurisdiction of the English courts.