

STANDARD TERMS AND CONDITIONS OF SALE OF GOODS

HARGREAVES (UK) SERVICES LIMITED

T/A MONCKTON RUBBER TECHNOLOGIES

1 INTERPRETATION

- 1.1 In these Conditions the following words shall have the following meanings, unless the context requires otherwise:

Conditions means these Standard Terms and Conditions of Sale of Goods;

Contract means any contract between the Supplier and the Customer for the sale of the Goods and which incorporates these Conditions, the Quotation (and any documents attached by the Supplier including but not limited to the Specification) the Order and any special terms agreed in writing by an authorised representative of the Supplier and the Customer;

Customer means the person(s), firm or company who purchases the Goods from the Supplier;

Delivery Location means the place where delivery of the Goods is to take place under the Contract as specified in the Quotation;

EXW means Ex Works as set out in Incoterms 2000;

FCA means Free Carrier as set out in Incoterms 2000;

Goods means any goods to be supplied to the Customer by the Supplier under the Contract;

Incoterms 2000 means the 2000 edition of the International Chamber of Commerce official rules for the interpretation of trade terms

Order means the Customer's acceptance of the Quotation (without variation);

Price means the price payable by the Customer to the Supplier for the Goods as set out in the Quotation;

Quotation means the written quotation for supplying the Goods given to the Customer by the Supplier;

Site means the Supplier's site at Stevenson Road Sheffield South Yorkshire S9 3XG;

Specification means the Supplier's specification for the Goods which is attached to the Quotation;

Supplier means Hargreaves (UK) Services Limited (trading as Monckton Rubber Technologies) whose registered office is situated at West Terrace, Esh Winning, Durham, County Durham DH7 9PT; and

Working Day means a day Monday to Friday which the Supplier is ordinarily open for business excluding any bank holidays and statutory holidays.

- 1.2 In these Conditions, unless a contrary intention appears:

1.2.1 the singular includes the plural and vice versa;

1.2.2 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;

1.2.3 headings are for ease of reference only and shall not effect the interpretation or construction of these Conditions;

1.2.4 any lists or examples following the word **including** shall be interpreted without limitation to the generality of the preceding words;

1.2.5 references to **writing** shall include facsimile and email.

2 APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:

2.1.1 apply to and be incorporated into the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in any purchase order, confirmation of order, acceptance of a quotation or specification or other document produced by the Customer, or implied by law, trade custom, practice or course of dealing.

- 2.2 These Conditions are the only basis on which the Supplier is prepared to deal with the Customer and the Contract shall be based on these Conditions to the entire exclusion of all other terms and conditions which the Customer may purport to apply to the Contract. These Conditions shall apply to all purchases of Goods by the Customer from the Supplier.

- 2.3 These Conditions shall govern each Order made by the Customer and no terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract including by way of reference to any such document.

- 2.4 No variation of these Conditions shall have effect unless agreed in writing by a director of the Supplier.

3 ORDERS

- 3.1 Any Quotation provided to the Customer by the Supplier shall constitute an offer by the Supplier to supply the Goods to the Customer on the terms set out in the Quotation and subject to these Conditions. Any Quotation shall be issued at the Supplier's sole discretion.

- 3.2 No contract will come into existence until an Order is placed by the Customer to purchase the Goods from the Supplier on the terms set out in the Quotation, or (if earlier) the Supplier delivers the Goods to the Customer.

- 3.3 Any Order given to the Supplier shall be deemed to accept the Quotation in full and constitute agreement by the Customer to be bound by these Conditions.

- 3.4 The Customer is responsible for the completeness and accuracy of any Order submitted to the Supplier.

4 DESCRIPTION

- 4.1 The quantity and description of the Goods shall be as set out in the Quotation.

- 4.2 All technical data, descriptions, and illustrations of the Goods produced by the Supplier are illustrative only and will not form part of the Contract.

5 DELIVERY

- 5.1 Delivery of the Goods shall take place at the Delivery Location.

- 5.2 Any stated delivery times or dates are an estimate only and are not guaranteed. Time for delivery shall not be of the essence.

- 5.3 Where delivery of the Goods is specified in the Contract, the Goods shall be delivered FCA to the Delivery Location. Please note that under FCA the Customer is responsible for unloading of the Goods at the place of delivery at its own cost. Delivery under this Clause 5.3 shall only take place on Working Days by lorry along hard access roads onto a safe delivery site specified in the Contract. Where such delivery conditions are not in place, the Supplier shall notify the Customer and shall be deemed to have delivered the Goods.

- 5.4 Where delivery of the Goods is not specified in the Contract, the Goods shall be made available for collection EXW at the Site. The Customer shall be responsible for loading of the Goods and if it requires may request loading assistance from the Supplier.

- 5.5 Where delivery is taking place EXW under Clause 5.4, the Customer shall ensure that its haulage contractor:

5.5.1 is fully aware of and observes all applicable health and safety rules and regulations;

5.5.2 complies with all written instructions given by the Supplier to the Customer or directly to the haulage contractor, and with all written instructions at the unloading point at the ultimate destination of the Goods;

5.5.3 ensures that the Goods loaded for transport onto vehicles are properly secured; and

5.5.4 complies in full with all statutory provisions in place from time to time, including but not limited to the Environmental Protection Act 1990.

- 5.6 The weight of the Goods supplied shall be measured at the Supplier's weighbridge and as recorded by the Supplier shall be the final conclusive deemed weight of the Goods delivered, save in the case of manifest and substantial error.

- 5.7 Signature of any delivery note by an agent, employee or representative of the Customer or the carrier shall be conclusive proof of delivery.

- 5.8 Subject to the other provisions of these Conditions, the Supplier will not be liable for any direct, indirect or consequential loss, including but not limited to, loss of profit, costs, damages, charges or expenses caused by any delay in the delivery of the Goods (even if caused by the Supplier's negligence).

- 5.9 If for any reason the Customer fails to take delivery of or to collect the Goods (as appropriate) when they are ready or the Supplier is unable to deliver the Goods on the delivery date because the Customer has not provided appropriate instructions, licences, authorisations or access pursuant to Clause 5.3:

5.9.1 risk in the Goods will pass to the Customer (including for loss or damage caused by the Supplier's negligence);

5.9.2 the Goods will be deemed to have been delivered; and

5.9.3 the Supplier may store the Goods until delivery or collection (as appropriate) at the Customer's cost (including but not limited to storage and insurance costs).

- 5.10 The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

6 NON DELIVERY

- 6.1 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless written notice is given to the Supplier within seven (7) days of the date when the Goods would in the ordinary course of events have been received.

- 6.2 Any liability of the Supplier for non-delivery of the Goods shall be limited, at the Supplier's sole discretion, to:

6.2.1 delivering the Goods within a reasonable time; or

6.2.2 issuing a credit note against any invoice raised for such Goods, at the pro rata Price based on the quantity of the Goods which have not been delivered; or

6.2.3 refunding at the pro rata Price the amount paid for the quantity of the Goods which have not been delivered;

and this shall be the Customer's sole and exclusive remedy in relation to such non-delivery.

<p>7 RISK AND TITLE</p> <p>7.1 The Goods are at the Customer's risk from the time of delivery.</p> <p>7.2 Ownership of the Goods shall not pass to the Customer until the Supplier has received in full and in cleared funds:</p> <p>7.2.1 all sums due to it in respect of the Goods; and</p> <p>7.2.2 all sums due or becoming due to the Supplier from the Customer.</p> <p>7.3 Until ownership of the Goods has passed to it, the Customer must:</p> <p>7.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;</p> <p>7.3.2 store the Goods at no cost to the Supplier separately from other Goods so they remain readily identifiable as the Supplier's property;</p> <p>7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;</p> <p>7.3.4 maintain the Goods in satisfactory condition, insured on the Supplier's behalf for their full price against all risks to the satisfaction of the Supplier; and</p> <p>7.3.5 hold the proceeds of the insurance referred to in Clause 7.3.4 on trust for the Supplier and not mix them with any other money nor pay the proceeds into an overdrawn bank account.</p> <p>7.4 Unless otherwise agreed between the parties, the customer shall have no right to resell the Goods;</p> <p>7.4.1 In the event that the Supplier grants the Customer the right to resell the Goods, the Customer shall not be entitled to resell the Goods until title in the Goods has passed from the Supplier to the Customer</p> <p>7.4.2 .</p> <p>7.5 In respect of Goods to which ownership has not passed to the Customer, the Supplier shall be entitled to require the Customer to deliver up the Goods to the Supplier and if the Customer fails to do so forthwith, the Supplier may either accelerate any credit period in relation to the payment of the Price and/or recover the Goods if:</p> <p>7.5.1 the Customer commits any material breach of any of its obligations under these Conditions;</p> <p>7.5.2 any of the events specified at Clause 12.1 occur;</p> <p>7.6 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods has not passed from the Supplier.</p> <p>7.7 The Customer grants the Supplier, its agents, sub-contractors and employees an irrevocable licence at any time to enter premises where the Goods are or may be stored to inspect or where the Customer's right to possession has terminated to recover the Goods.</p> <p>7.8 Where the Supplier is unable to determine whether any Goods are those in respect of which the Customer's right to possession has terminated the Customer shall be deemed to have sold all Goods in the order in which such Goods were invoiced to the Customer.</p> <p>7.9 On termination of the Contract, the Supplier's, but not the Customer's, rights under this Clause 7 shall remain in effect.</p> <p>8 PRICE AND PAYMENT</p> <p>8.1 Unless otherwise agreed in writing by the Supplier, the Price shall be due and payable by the Customer in full and cleared funds two Working Days prior to delivery and time of payment shall be of the essence.</p> <p>8.2 The Price for the Goods shall be exclusive of any value added tax and any other applicable duties, levies and/or taxes which amount the Customer will pay in addition when it pays for the Goods.</p> <p>8.3 Unless otherwise agreed by the Supplier in writing the Price shall be exclusive of any and all costs or charges in relation to any delivery costs pursuant Clause 5.3, which the Supplier shall invoice the Customer in respect of on delivery of the Goods.</p> <p>8.4 Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under against any amounts payable by it to the other party..</p> <p>8.5 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Supplier reserves the right to claim interest (both before and after judgment) on all overdue amounts under the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2002, such interest to accrue on a daily basis from the due date for payment until receipt of payment in full and cleared funds by the Supplier.</p> <p>8.6 In addition to its right to charge interest on late payment as set out in Clause 8.5, where any sum owed by the Customer to the Supplier under the Contract is overdue or the Customer exceeds its authorised credit limit with the Supplier, the Supplier shall be entitled (but shall not be obliged) to do any or a combination of the following without prejudice to any other right or remedy:</p> <p>8.6.1 to suspend all or any part of the supply of the Goods;</p> <p>8.6.2 to cancel all or any part of any outstanding Contract;</p> <p>8.6.3 to refuse to accept any further Orders; or</p>	<p>8.6.4 to exercise its rights to recover the Goods pursuant to Clause 7.7.</p> <p>8.7 In the event that such default continues for longer than thirty (30) days, the Supplier shall be entitled but not bound (without any liability and without prejudice to any other rights that it may have in respect thereof) to terminate the Contract forthwith on written notice to the Customer.</p> <p>9 CUSTOMER OBLIGATIONS</p> <p>9.1 The Customer shall:</p> <p>9.1.1 co-operate with all the reasonable instructions of the Supplier in its performance of the Contract and shall provide such assistance to the Supplier as the Supplier may reasonably require;</p> <p>9.1.2 provide at the Delivery Address adequate and appropriate access to facilitate the delivery of the Goods; and</p> <p>9.1.3 make available to the Supplier any instructions, documents, licences or authorisations required in order for the Supplier to deliver the Goods.</p> <p>9.2 The Customer warrants that it shall only use the Goods for lawful purposes.</p> <p>9.3 The Customer shall indemnify and keep indemnified the Supplier against all and any actions, claims, demands, costs and expenses (including legal expenses and disbursements) incurred by or made against the Supplier in respect of any loss or damage or personal injury (including death) which arises out of or in connection with the Customer's failure to comply with Clause 9.2.</p> <p>9.4 For the avoidance of doubt where the Customer fails to comply with its obligations under this Clause 9 the Supplier shall be entitled to delay the delivery of the Goods without liability until the Customer so complies.</p> <p>10 QUALITY</p> <p>10.1 The Supplier warrants to the Customer that (subject to the terms of these Conditions) upon delivery the Goods shall:</p> <p>10.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and</p> <p>10.1.2 conform in all material respects with the Specification,</p> <p>provided that the Customer shall accept reasonable variations in quality and quantity having respect to the known characteristics of the Goods.</p> <p>10.2 The Supplier shall not be liable for a breach of the warranties at Clause 10.1 unless:</p> <p>10.2.1 the Customer gives written notice of the defect to the Supplier within three (3) days of the time when the Customer discovers or ought to have discovered the defect in the Goods; and</p> <p>10.2.2 the Supplier is given a reasonable opportunity after receiving notice of the defect to examine such Goods.</p> <p>10.3 The Supplier shall not be liable for a breach of the warranty in Clause 10.1 if:</p> <p>10.3.1 the Customer makes any further use of the Goods after giving notice under Clause 10.2;</p> <p>10.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use or maintenance of the Goods; or</p> <p>10.3.3 the defect arises because the Customer has failed to comply with the Specification.</p> <p>10.4 Subject to Clauses 10.2 and 10.3, if any of the Goods do not conform with the warranty in Clause 10.1, the Supplier shall at its sole discretion:</p> <p>10.4.1 repair or replace such Goods (or the defective part); or</p> <p>10.4.2 refund the price of such Goods at the pro rata Price based on the quantity of the Goods which do not conform with the warranty,</p> <p>and this shall be the Customer's sole and exclusive remedy in relation to such defective Goods.</p> <p>11 LIMITATION OF LIABILITY</p> <p>11.1 The following provision sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:</p> <p>11.1.1 any breach of these Conditions; and</p> <p>11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.</p> <p>11.2 Save as provided by Section 12 of the Sale of Goods Act 1979 and in these Conditions, all warranties, conditions and other terms implied by statute or common law or through trade custom or course of dealing are, to the fullest extent permitted by law, excluded from the Contract.</p> <p>11.3 Nothing in these Conditions excludes or limits the liability of either party for death or personal injury caused by the other party's negligence or for fraud or fraudulent misrepresentation nor where liability cannot be excluded or limited as a matter of law.</p> <p>11.4 Subject to Clause 11.3, the Supplier's total liability arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price payable for the Goods under the Contract.</p> <p>11.5 For the avoidance of doubt there shall be included in the amount set out in Clause 11.4 all legal and other professional fees, costs and expenses incurred by the Customer in establishing and presenting any claim against the Supplier.</p>
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- 11.6 Whether or not the Supplier has been advised of the possibility of such a loss, the Supplier shall not be liable in contract, tort (including negligence), statutory duty or otherwise howsoever for any claim, damage, loss or costs in respect of (whether direct or indirect):
- 11.6.1 loss of profit;
 - 11.6.2 loss of use;
 - 11.6.3 loss of anticipated contracts and/or savings;
 - 11.6.4 loss of goodwill;
 - 11.6.5 loss of opportunity;
 - 11.6.6 loss of business and/or business interruption; or
 - 11.6.7 any indirect, consequential or special loss or damage,

and the parties intend that each type of loss under this Clause 11.6 shall be severable in accordance with Clause 14.8.

- 11.7 Where the Supplier supplies the Goods to the Customer for incorporation with, or use ancillary to, any composite or other products to be produced, manufactured, processed or supplied by the Customer or a third party then the Customer shall indemnify and keep indemnified the Supplier against all and any actions, claims, demands, costs and expenses (including legal expenses and disbursements) incurred by or made against the Supplier relating to the composite or other products in circumstances in which the Goods supplied by the Supplier are either:

- 11.7.1 not the defective part of the composite or other product; or
- 11.7.2 only rendered the defective part or became a defective product by reason of acts or omissions of the Customer or a third party (including without limitation the supply of defective free issue materials); or
- 11.7.3 only rendered the defective part or became a defective product by reason of instructions or warnings given by the Customer or other supplier of the composite or other products.

12 TERMINATION

- 12.1 The Supplier is entitled to terminate the Contract immediately on written notice if:
- 12.1.1 the Customer fails to observe or perform any of its obligations under the Contract; or
 - 12.1.2 (being an individual or partnership) the Customer:
 - (a) suspends, or threaten to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or are deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986;
 - (b) makes or proposes to make an arrangement or composition with its creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
 - (c) is or proposes to become the subject of a bankruptcy petition or order;
 - (d) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing its own affairs or become a patient under any mental health legislation;
 - 12.1.3 (being a company) the Customer:
 - (a) is, or the Supplier reasonably considers it to be, unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986;
 - (b) makes or proposes to make any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
 - (c) has a petition filed, a notice given, a resolution passed, or an order made, for or in connection with the winding up of it;
 - (d) has an application made to court, or an order made, for the appointment of an administrator, or a notice of intention to appoint an administrator given or an administrator is appointed over it;
 - (e) has a floating charge holder over its assets who has become entitled to appoint or has appointed an administrative receiver;
 - (f) has a person become entitled to appoint a receiver over its assets or a receiver appointed over its assets;
 - 12.2 the Customer suffers actions analogous to those described in Clauses 12.1.2 and 12.1.3 in any jurisdiction;
 - 12.3 the Supplier, acting reasonably, has serious doubts as to the Customer's solvency;
 - 12.4 any distraint is levied against the Customer or its property by any third party;
 - 12.5 the Customer ceases, or threatens to cease, to carry on all or a substantial part of its business; or

- 12.6 there is late or non-payment by the Customer of any monies due to the Supplier.

13 FORCE MAJEURE

The Supplier reserves the right to defer the date of delivery under or to cancel any Contract (without liability to the Customer) and shall not be liable for any failure to meet its obligations under any Contract if it is prevented from or delayed in the carrying out of its obligations under the Contract due to circumstances beyond the reasonable control of the Supplier including, but not limited to, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), failure of a utility service or transport network, or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials, or other similar event.

14 GENERAL

- 14.1 The Customer shall not assign, sub-contract or otherwise dispose of the Contract or any part of it without the prior written consent of the Supplier.
- 14.2 No changes to these Conditions will apply unless they have been agreed to in writing and signed by an authorised signatory of the Supplier.
- 14.3 An entity which is not expressly a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be expressly excluded from the Contract.
- 14.4 The parties agree to comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- 14.5 The Contract (including the Conditions) constitutes the entire agreement between the parties in respect of the supply of Goods to the Customer by the Supplier. The Contract replaces any previous agreement or understanding between the parties.
- 14.6 The Customer expressly acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.
- 14.7 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.
- 14.8 If any provision of the Contract is held invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 14.9 Failure or delay by the Supplier in enforcing or partially enforcing any of its rights or remedies under the Contract will not be construed as a waiver of any of its rights under the Contract and shall not prevent the Supplier from later reasserting such rights or remedies.
- 14.10 Nothing in the Contract is intended to, or shall operate to, create a partnership or corporate relationship between the parties, or to authorise either party to act as the agent of the other, and neither party shall have the authority to act in the name of or otherwise to bind the other in any way.
- 14.11 The Contract shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

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