

Terms and Conditions

November 2004



I. Applicability / quotations

1. These terms and conditions shall apply for deliveries and other performances for all contracts with companies, corporate bodies under public law, and special funds under public law. The customer's conditions shall only apply if we expressly recognize customer's conditions in writing.
2. Our quotations shall be subject to change. Oral or written assertions and/or guarantees that deviate from our conditions and/or the order confirmation, or that supplement the order confirmation, shall require the consent of the bodies authorized to represent our company, or the consent of the authorized joint signatories of our company, in order to become effective.
3. The Incoterms in their latest valid version shall be authoritative for the interpretation of terms of trade if there is doubt.
4. All information, such as dimensions, weights, illustrations, descriptions, installation diagrams, and drawings, in sample books, price lists, and other printed material is only approximate; however such information has been determined to the extent possible, consequently this information shall not be binding for us. The same shall apply for information concerning the works. Models and drawings shall remain our property.
5. The "Buyer" in the context of these conditions is also the "Purchaser" for contracts for works and labor.
6. Tools, molds, or other auxiliary materials that are necessary for execution of the order, that we have manufactured, shall remain our exclusive property. The costs incurred in this regard shall be billed to the ordering party and can be offset within the framework of an express agreement with subsequent deliveries, at a maximum of 10% of the respective invoice amount.
7. We shall expressly reserve the right to reject orders with an invoice value of less than € 125.00 per item. If this invoice value is underranged then we shall be authorized to charge a minimum price for the order.

II. Prices

1. The prices shall be understood as being ex works or ex warehouse plus freight and VAT.
2. If nothing to the contrary is agreed, the prices and conditions of our valid price list at the time the contract is concluded, shall apply.
3. If duties or other external costs that are included in the agreed price change later than four weeks after the contract is concluded, or if they are newly incurred, then we shall be authorized to make price changes in the corresponding scope.
4. For quantities that have not yet been delivered we shall reserve the right to increase the agreed price, if due to a change in the raw material, and/or the economic situation circumstances occur that render the manufacturing and/or procurement of the respective product significantly more expensive than it was at the point in time when the prices were agreed. In this case the customer shall be authorized to annul the orders that are affected within four weeks after receiving notification of the price increase; however the customer shall be responsible for the costs incurred to that time.

III. Payment and invoicing

1. If nothing to the contrary is agreed or specified in our invoices, the purchase price shall be due and payable immediately after delivery without cash discount deduction and the purchase price shall be paid in such a manner that the amount is credited to our account on the day the amount is due. Costs associated with making the payment shall be the responsibility of the Purchaser. The Purchaser shall only be authorized to withhold or offset if Purchaser's counterclaims are undisputed or have been made legally binding.
2. If the due date is exceeded, or if payment is in arrears, we shall charge interest in the amount of 8 percentage points over the base rate, unless higher interest rates are agreed. We shall reserve the right to enforce additional damages if payment is in arrears.
3. The Purchaser shall be deemed to be in arrears at the latest 10 days after the date on which payment was due and receipt of the invoice/payment schedule, or receipt of the performance.
4. Due to the authorization issued to us by the companies that belong to our Group *), we are authorized to offset with all receivables to which the Purchaser is entitled, regardless of legal grounds, from us or one of our companies. The same shall also apply if from one side cash payment, and from the other side payment via bill of exchange or other methods have been agreed on account of performance. If necessary these agreements shall only be based on the balance. If the deadlines for outstanding receivables differ, our outstanding receivables shall be due at the latest by the due date of our liability and with a deducted validation.
5. If it becomes apparent after conclusion of the contract that payment of our claims is in danger due to inability of the Purchaser to pay, then we shall retain the rights under § 321 of the German Civil Code (Objections Due to Uncertainty). We shall then also be authorized to fix a due date for all claims not barred by the statutes of limitation arising from the ongoing business relationship with the Purchaser. In all other aspects the objections due to uncertainty shall extend to all other outstanding goods and services arising from the business relationship with the Purchaser.
6. An agreed discount shall always be based on the invoice value exclusive of freight, provided that Purchaser has made complete payment for all of Purchaser's liabilities that are due at the time of the discount.

IV. Execution of deliveries, delivery periods, and delivery dates

1. The delivery period shall start after complete clarification of the order and sending of our order confirmation. This is the guide value and it may be slightly underranged or exceeded.
2. The delivery period shall be considered to be met if the shipment has left our plant, or if we have notified the Purchaser of our readiness-to-ship within the agreed period.
3. We shall strive to comply with delivery periods to the extent possible. However if trouble-free processing of the order is in doubt for reasons for which we are not responsible, then we shall be authorized to postpone delivery, or to rescind the contract in whole or in part; the Purchaser shall not be entitled to derive any claims from this action.
4. Our delivery obligation shall be conditional on proper and timely delivery of supplies and raw materials, unless we are responsible for the incorrect or delayed delivery of supplies and raw materials.
5. Information concerning delivery times is approximate. Delivery periods shall commence with the date of our order confirmation, and shall only apply with the prerequisite of timely clarification of all details of the order and timely fulfillment of all obligations on the part of Purchaser, such as provision of all government agency certifications, presentation of letters of credit and guarantees, or remittance of advance payments.
6. The time at which the goods left the plant or warehouse, shall be authoritative for verification of compliance with delivery periods and delivery dates. Our notification of readiness to ship shall constitute compliance with the specified delivery periods if the goods cannot be sent at the right

time for reasons for which we are not responsible.

7. Force majeure events shall authorize us to postpone delivery by the duration of the obstruction plus an appropriate ramp-up time. The above shall also apply if such events occur when there is already a delay. Force majeure shall include currency measures, trade policy, and other sovereign measures, strikes, lock-outs, operational disturbances for which we are not responsible (e.g. fire, machine or roller break, lack of raw materials or energy) obstruction of traffic routes, import or customs delays, as well as all other circumstances, whatever they may be, for which we are not responsible, that make deliveries significantly more difficult or impossible. In this regard it shall be irrelevant whether these circumstances occur at our location, the delivering plant, or at the location of an upstream supplier. If due to the events cited above, execution of the order becomes unreasonable for one of the contracting parties, in particular if contract execution in essential parts is delayed by more than 6 months, this contracting party shall be authorized to declare cancellation of the contract.
8. Partial shipments shall be permitted.

V. Retention of title

1. All delivered goods shall remain our property (goods subject to retention of title) until full payment of all outstanding receivables, particularly payment of all claims for outstanding balances, to which we are entitled in conjunction with the business relationship (retention of title until outstanding accounts have been paid) and including the claims asserted unilaterally by the trustee in insolvency under the trustee's power of novation. The same shall also apply to claims which may arise in the future and to contingent receivables, e.g. from acceptor's bills, and they shall likewise apply where payments have been made or are made in respect of specially designated receivables. This reservation of title until payment of all outstanding claims shall finally cease when all of the receivables which are still open at the time of the payment and covered by this retention of title have been fully satisfied.
2. Processing of the goods subject to retention of title shall be executed for us as manufacturer in the terms set forth in § 950 of the German Civil Code, without giving rise to any obligation on our behalf. The processed goods shall be considered as goods subject to retention of title as stipulated in no. 1. In the event of processing, combining, and mixing the goods subject to retention of title with other goods on the part of the Purchaser, we shall be entitled to a pro rata co-ownership share in the new object in such proportion as the invoiced value of the reservation of title goods bears to the invoiced value of the other goods used. If our ownership ceases due to combination or mixing, then Purchaser shall assign to us, now and in advance, all such ownership rights in the new item or object as the Purchaser is or would be entitled to assert, to the extent of the invoiced value of the goods subject to reservation of title, and the Purchaser shall gratuitously store the same for us; our co-ownership rights shall be deemed to constitute goods subject to reservation of title as set forth in no. 1.
3. The Purchaser shall only sell the goods subject to retention of title in the ordinary course of business at Purchaser's normal terms and conditions of business and only if Purchaser is not in arrears, provided that the receivables arising from Purchaser's resale are assigned to us in accordance with numbers 4 to 6. The Purchaser shall not be authorized to dispose of the goods subject to retention of title in any other manner.
4. The receivables arising from the resale of goods subject to retention of title shall be assigned to us now and in advance, together with any and all security interests that the Purchaser shall acquire. These shall be used in the same scope for the purpose of securing the goods subject to retention of title. If the goods subject to retention of title are re-sold by the Purchaser together with goods that are not sold by us, then the receivable arising from the resale shall be assigned to us pro rata in proportion to the invoiced value of the goods subject to retention of title relative to the invoiced value of the other goods sold. If goods are sold in which we have a co-ownership share as set forth in no. 2, the Purchaser shall assign a share corresponding to our right of co-ownership. If Purchaser uses the goods subject to retention of title to perform a contract for works and services, then Purchaser's claim arising from the contract for works and services shall be assigned to us now and in the future in the same scope.
5. The Purchaser shall be authorized to collect receivables arising from the resale. This authorization to collect funds shall be cancelled in the event of our revocation, however no later

than at such time as the Purchaser is in arrears with payment, or if a bill of exchange is not honored, or an application is made for the opening of insolvency proceedings. In these cases we shall only avail ourselves of our right of revocation, if after the contract is concluded it becomes apparent that our claim for payment arising from this contract or other contracts with the Purchaser is at risk due to Purchaser's lack of ability to pay. At our request the Purchaser shall be obligated to inform Purchaser's customers of the assignment to us and to give us the documents that are necessary for collection.

6. An assignment of receivables arising from the resale shall be impermissible, except in the case of assignment by way of true factoring, of which we are notified, and for which the factoring proceeds exceed the value of our secured receivable. Our receivable shall become immediately due and payable when the factoring proceeds are credited.
7. The Purchaser shall be obligated to report any attachment or other impairments through third parties, to us without delay. The Purchaser shall bear all costs required to eliminate the third-party interference or for return transport of the goods subject to retention of title, if such costs are not paid by third parties.
8. If the Purchaser is in arrears with payment, or if the Purchaser fails to honor a bill of exchange upon maturity we shall be authorized to take back the goods subject to retention of title and if necessary to enter the Purchaser's premises for this purpose. The same shall apply if after concluding the contract it becomes apparent that our payment claim arising from this contract or different contracts with the customer is at risk due to Purchaser's lack of ability to pay. The take back shall not constitute rescission of the contract. Regulations of the German Bankruptcy code shall remain hereby unaffected.
9. If the invoice value of the existing securities exceeds the secured receivables including ancillary receivables (interests, costs, etc.) by more than 50% in total, then we shall be obligated on Purchaser's request to release such securities as we may select.

VI. Quality levels, dimensions, and weights

1. Quality levels and dimensions shall be determined on the basis of the applicable DIN/EN standards after the contract is concluded, or in the absence of such, on the basis of commercial practice. References to standards, factory standards, material sheets, or test certificates, as well as information on quality levels, dimensions, weights and usability shall not constitute assurances or guarantees, nor shall declarations of conformity, manufacturer's declarations, and the corresponding CE and GS marks constitute assurances or guarantees.
2. For weights, the weighing executed by us or our upstream suppliers shall be authoritative. Verification of weight shall be executed by submission of the weighing ticket. To the extent legally permitted weights can be determined without weighing according to standard. If individual weighing is not usually executed, the total weight of the shipment shall apply. Differences relative to the calculated individual weights shall be distributed proportionally over the total weight of the shipment.
3. For the externally detectable characteristics of our products - particularly for roller coverings - the tolerance and quality guidelines on the basis of the WDK (Wirtschaftsverband der Deutschen Kautschukindustrie) guidelines for rubber rollers, specifications for dimensions, surface structure, and surface quality, as well as applicable DIN standards, shall apply. These guidelines can be viewed on request.
4. For re-grinding of rollers we warrant only compliance with the agreed dimensions and surface tolerances. We cannot assume any liability for occurring defects, or existing defects.
5. If Purchaser desires that studs or bores shall be finished by us, then an allowance of 0.2 - 0.3 mm based on the respective diameter must be present.

VII. Acceptance

1. If an acceptance is agreed then it shall only be executed in the delivering plant or at our warehouse

immediately after readiness for the acceptance is reported. The personnel costs associated with acceptance shall be borne by the Purchaser, the technical acceptance costs, shall be billed to the Purchaser in accordance with our price list or the price list of the delivering plant.

2. If the acceptance procedure is not executed, not executed on time, or not executed completely for reasons for which we are not responsible, then we shall be authorized to ship the goods without acceptance, or to store the goods at the cost and risk of the Purchaser and to bill the Purchaser.

VIII. Shipping, transfer of risk, packaging, partial shipments

1. We shall determine the shipping route, means of transport, as well as freight forwarder, and forwarding agent.
2. If, for reasons for which we are not responsible, transport via the intended route or to the intended location, or in the intended timeframe shall be impossible, or shall become significantly more difficult, then we shall be authorized to deliver via a different route; the Purchaser shall be responsible for any additional costs incurred. The Purchaser shall be given prior opportunity for comment.
3. With transfer of the goods to a freight forwarder or forwarding agent, at the latest however when the goods leave the warehouse or the delivering plant, the risk, including the risk of the goods being confiscated, for all transactions, including delivery free of charge to the specified destination, and carriage-free deliveries, shall be transferred to the Purchaser. We shall be responsible for insurance only on the instruction of the Purchaser and at the Purchaser's costs, the obligation and costs for unloading shall be the Purchaser's responsibility.
4. We shall be responsible for packaging, protection, and/or auxiliary transport aids, in accordance with our experience, at the expense of Purchaser. Packaging, protection, and/or auxiliary transport aids shall be taken back at our warehouse. We shall not be responsible for Purchaser's costs for return transport, or for Purchaser's costs for disposal of the packaging.
5. We shall be authorized to make partial shipments within a reasonable scope. Overshipments, and undershipments relative to the agreed quantity that are usual for the industry shall be permissible.
6. On Purchaser's request and at Purchaser's expense, we shall insure the shipment against theft, breakage, transport damage, fire damage, and water damage.

IX. Call-off orders

1. For call-off orders, goods that have been reported to be ready to ship in accordance with the contract must be called off without delay, if this is not the case we shall be authorized after issuing a reminder, to either deliver the goods or store them at our discretion at the expense and risk of Purchaser, and to bill for said goods without delay.
2. For contracts with continuous delivery, call-off orders and classifications for approximately the same monthly quantities shall be placed with us; if this is not done then we shall be authorized to make these determinations in accordance with equitable discretion.
3. If the quantities of the individual call-offs exceed the overall contract quantities then we shall be authorized to deliver the additional quantity, however we shall not be obligated to deliver the additional quantity. We shall be authorized to bill the added quantity at the prices valid for the call-off or delivery.

X Liability for material defects

1. Material defects of the goods shall be reported in writing without delay, at the latest 7 days after delivery. Material defects that cannot be detected within this period even with the most careful

inspection, shall be reported in writing immediately after discovery - with immediate cessation of any use or processing - at the latest prior to expiration of the agreed or legal period of limitation.

2. After execution of an agreed acceptance procedure for the goods by the Purchaser the notification of material defects that were identifiable via the agreed type of acceptance shall be excluded.
3. With legitimate, timely notification of defect, we shall be authorized to eliminate the defect, or deliver a defect-free object (supplementary performance) at our discretion. If the supplementary performance should prove unsuccessful, or if the supplementary performance is refused, then the Purchaser shall be authorized to reduce the purchase price, or after specification and expiration of an appropriate grace period, Purchaser shall be authorized to rescind the contract. If the defect is not significant, then the Purchaser shall only be authorized to reduce the purchase price.
4. If the Purchaser does not give us immediate opportunity to convince ourselves of the material defect, particularly if Purchaser does not make the goods or the samples that are the object of the complaint immediately available, then all of Purchaser's rights due to the material defect shall be nullified.
5. For goods that have been sold as declassified material, - e.g. so-called IIa material (secondaries) - the Purchaser shall have no rights relative to the specified reasons for the declassification, and such that could normally be expected, arising from material defects. Our liability due to material defects shall be excluded for the sale of IIa material.
6. We shall be responsible for expenses associated with non-fulfillment only if they are appropriate in the specific case, particularly in relationship to the purchase price of the goods. We shall not be responsible for expenses that are incurred because the goods have been taken to a location other than the registered office or the plant of the Purchaser, unless this measure corresponds to the contractual use of the goods.
7. Purchaser's rights of recourse in accordance with Article 478 of the German Civil Code (BGB) shall remain hereby unaffected.
8. We do not provide a warranty for a specific purpose or a specific suitability of the goods unless deviating clauses have been expressly agreed in writing; in all other aspects the risk of implementation and use shall remain exclusively with the Purchaser.
9. The ordering party shall bear the responsibility for delivering faultless roller bodies to us. If additional expenses result from the faulty condition of the roller body, then these additional expenses shall be invoiced separately to the ordering party. This shall particularly apply for bonding properties of the roller bodies delivered to us.
10. For metal surfaces that have been finished, such as roller studs, discolorations can occur due to the manufacturing process of the coating, these however do not impair the function. We cannot assume any liability for this occurrence.
11. The Purchaser shall inspect the products that we have delivered for any faults after the goods have been received. Faults that can be detected at this inspection shall be either repaired or compensated for by take-back and re-delivery of defect-free products at our sole discretion.
12. We shall be liable for concealed defects within the limits of the legal period after transfer of risk. Concealed defects that are only detected after the legal period cited above has expired shall only then be available if the defects verifiably occurred prior to transfer of risk and said defects caused the unuseability of our products or a significant impairment of the usability of our products. In this case as well we shall be authorized to correct the defect or provide a replacement at our discretion.
13. The Purchaser shall provide us with the required time and opportunity for execution of any rectification of defects and replacement deliveries.
14. We shall not be liable for defects that occur at the Purchaser's facility due to operation-related wear, nor shall we be liable for damage that occurs due to excessive load, unsuitable operating

equipment, and improper handling at the Purchaser's facility, or that is caused after delivery to the Purchaser due to mechanical or thermal influences to the materials that we have delivered.

15. Liability for material defects and third-party products shall not exceed the respective invoice value under any circumstances. We shall only be liable for manufacturing-related faults.
16. Other claims for compensation for damage that does not occur on the object itself, or claims arising from other material defects or defects in title, if they are not already excluded by existing conditions or the conditions specified below, shall be limited to our liability in accordance with the statutory liability insurance conditions contained in the civil law and shall be limited to the existing amount of coverage provided by our liability insurance policy.

XI. General limit of liability

1. We shall be liable for violation of contractual and non-contractual obligations, particularly due to impossibility, delay, culpability for contract negotiations, and impermissible action - also for our managing employees and vicarious agents - only in cases of intent and gross negligence, limited to the damages that are typical for this type of contract and foreseeable at the time this contract was concluded.
2. These limitations shall not apply in the event of culpable violation of essential contractual obligations, if the achievement of the contract purpose is in jeopardy, in cases of mandatory liability in accordance with the product liability law, for damage to life, body and health, if we have maliciously concealed material defects, or if we have guaranteed the absence of such defects. The rules governing the burden of proof shall remain hereby unaffected.
3. If nothing to the contrary is agreed then contractual claims that the Purchaser has against us for cause, or that arise in conjunction with the delivery of goods, shall expire one year after delivery of the goods. This period shall also apply for those goods that are used for a system in accordance with their usual manner of use and have caused the defectiveness of the system. Our liability due to willful and grossly negligent violation of obligations, as well as the expiration of legal rights of recourse shall remain unaffected by the above clause. In the cases of supplementary performance the period of limitation shall not recommence.

XII. Place of fulfillment, court of jurisdiction, and applicable law

1. The place of fulfillment for our goods in the case of delivery ex works shall be the delivering plant, for the other deliveries the place of fulfillment shall be our warehouse. The court of jurisdiction shall be Düsseldorf.
2. All legal relationships between us and the Purchaser shall be governed by the non-standardized substantive laws of the Federal Republic of Germany supplementing these Conditions. Application of the UN convention on contracts for the international sales of goods (CISG) dated April 11th, 1980 shall be excluded.

XIII. Applicability of these terms and conditions

1. With the publication of this version of the terms and conditions all previous versions, become invalid if they deviate from these terms and conditions.
2. Purchaser's rights arising from this contract shall not be transferable.

XIV. Miscellaneous

1. If a Purchaser located outside of the Federal Republic of Germany (foreign Purchaser), or his authorized agent, picks up goods, or conveys or ships said goods to a foreign country, then the Purchaser must provide to us the required certificate of export for tax purposes. If this certificate is not provided then the Purchaser shall be obligated to pay the VAT on the invoice amount

applicable for shipments within the Federal Republic of Germany.

2. For deliveries from the Federal Republic of Germany to other EU member states, the Purchaser shall be obligated to communicate his VAT ID number, under which Purchaser is subject to purchase taxation within the EU, prior to delivery. Otherwise the Purchaser shall be obligated to pay the legally owed VAT amount, in addition to the purchase price agreed for our deliveries.
3. When deliveries from Germany to another member state of the EU are invoiced, the VAT arrangements of the recipient member state shall apply if the Purchaser is registered in another EU member state for VAT purposes, or if we are registered for VAT purposes in the recipient member state.
4. If a provision of these general terms and conditions is ineffective or becomes ineffective then, this shall not affect the effectiveness of the other conditions.

*) Mitex Gummifabrik Hans Knott GmbH
Mitex RotaDyne Vertriebsges. mbH