

MIDWEST RUBBER SERVICE & SUPPLY CO.

TERMS AND CONDITIONS OF SALE

1. **GENERAL.** THIS PURCHASE/SALE CONTRACT EXPRESSLY LIMITS ACCEPTANCE BY MIDWEST RUBBER SERVICE & SUPPLY CO. ("SELLER") OF ANY PURCHASE ORDER BY ANY PROPOSED PURCHASER ("PURCHASER") TO THE TERMS AND CONDITIONS STATED HEREIN. Any additional or different terms and conditions proposed by the Purchaser are objected to and hereby rejected, notwithstanding any terms and conditions that may be contained in any purchase order, acknowledgment, notice, communication or other Purchaser form, unless such additional or different terms are expressly accepted by Seller in writing, signed by an authorized officer of Seller. Any authorization to ship or other notice by Purchaser with respect to Purchaser's purchase order acknowledged hereby, or the acceptance by Purchaser of any goods from Seller with respect to any such Purchaser purchase order, or any payment by Purchaser shall be considered an acceptance of all terms and conditions specified herein. If this document is deemed to be a responding communication, then notwithstanding any additional or different terms that may be embodied in Purchaser's form, THIS ACCEPTANCE IS EXPRESSLY CONDITIONAL ON PURCHASER'S CONSENT TO THE ADDITIONAL AND/OR DIFFERENT TERMS AND CONDITIONS SET FORTH HEREIN. IF THESE TERMS AND CONDITIONS ARE NOT ACCEPTABLE, PURCHASER SHOULD NOTIFY SELLER AT ONCE.
2. **SHIPMENTS/TITLE/RISK OF LOSS.** Except as otherwise provided in Seller's invoice, all shipments will be made F.O.B. Seller's manufacturing facility in Minneapolis, Minnesota, Shanghai, China or Nieuwegein, The Netherlands, as applicable, and paid by Purchaser. All goods are shipped at Purchaser's risk. Title to the goods and risk of loss or damage shall pass to Buyer upon tender of delivery to a common carrier in Minneapolis, Minnesota, Shanghai, China or Nieuwegein, The Netherlands, as applicable.
3. **DELIVERY.** Delivery shall be subject to, and contingent upon, strikes, labor difficulties, riot, war, fire, delay or defaults of common carriers, governmental decrees or orders, or, without limiting the foregoing, any other delays beyond Seller's reasonable control, and Seller shall not be liable for any loss or actual or consequential damages arising from late delivery.
4. **CANCELLATION, SUSPENSION OR DELAY.** After acceptance by Seller, Purchaser's purchase order or contract is not subject to cancellation, suspension or delay by Purchaser without Seller's express prior written consent.
5. **TAXES, DUTIES AND FEES.** Seller's prices do not include taxes, duties, fees or other governmental charges or impositions with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the goods. Any such taxes, duties, fees or other charges which Seller may be required to pay or collect under any existing or future law, including taxes, duties or fees upon or measured by the receipts from the sale thereof, shall be promptly paid to Seller upon demand, unless Purchaser

provides Seller with a properly executed certificate representing that Seller is not required to collect any such taxes, duties or fees. Purchaser will indemnify and hold Seller harmless from any liability, penalties or expenses incurred by Seller as a result of its reliance upon such certificate.

6. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE AGREED IN WRITING BY AN AUTHORIZED OFFICER OF SELLER, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WHETHER RELATING TO THE GOODS AND/OR SERVICES PROVIDED BY SELLER OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OR AGAINST INFRINGEMENT, ALL OF WHICH ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM ANY AGREEMENT MADE BY ACCEPTANCE OF THIS OFFER.

7. **LIMITATION OF REMEDIES.** Should any Seller product prove not to conform to Seller's limited warranty, if any, the remedies of Purchaser for any breach of any warranty shall be limited to the repair or replacement of the product in Seller's discretion. IN NO EVENT SHALL SELLER'S OBLIGATIONS PURSUANT TO ITS WARRANTIES EXCEED THE PURCHASE PRICE PAID TO THE SELLER BY THE PURCHASER FOR THE PARTICULAR PRODUCT INVOLVED, TO THE EXCLUSION OF ALL OTHER REMEDIES OR LIMITATIONS.

8. **EXCLUSION OF CONSEQUENTIAL DAMAGES.** UNDER NO CIRCUMSTANCES WHATSOEVER, INCLUDING IN THE EVENT SELLER'S WARRANTY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGE, LOSS OR EXPENSE (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR GOOD WILL) ARISING FROM THIS AGREEMENT, OR FROM THE USE OF OR INABILITY TO USE THE GOODS AND/OR SERVICES FURNISHED BY SELLER HEREUNDER, WHETHER SUCH CLAIM IS BASED ON CONTRACT, NEGLIGENCE, STRICT TORT OR WARRANTY.

9. **GOVERNING LAW/DISPUTES.** This contract shall be governed by and interpreted in accordance with the internal laws of the State of Minnesota, United States of America (without regard to its principles of conflicts of law). NO ACTION ARISING OUT OF THIS SALE MAY BE BROUGHT BY PURCHASER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. In any action brought with respect to this contract or the items sold thereunder, upon prevailing, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and disbursements. All disputes which are in connection with this sale shall be resolved, if not sooner settled, by litigation in the state and/or Federal courts situate in Hennepin County, State of Minnesota, and PURCHASER HEREBY CONSENTS TO THE PERSONAL JURISDICTION THEREOF OVER PURCHASER. Seller and Purchaser hereby disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods (1980) to any transaction between the parties.

10. **EXCLUSIVE AGREEMENT.** This writing is intended by the parties as the final and complete expression of their agreement. Purchaser specifically agrees that Purchaser's standard language as may be contained in Purchaser's inquiry or purchase order documents will only apply to the extent such language is not contradicted by the language in this document. In the event of conflict between this document and Purchaser's standard documents, Seller's terms as expressed herein will prevail, unless Seller, by its duly authorized officer, has specifically agreed in writing to waive, modify, add or otherwise delete any of the herein written language. NO AGREEMENT VARYING OR EXTENDING THE TERMS, CONDITIONS, COVENANTS AND PROVISIONS OF THESE TERMS AND CONDITIONS OF SALE AND NO EXPRESS WARRANTY WILL BE BINDING UPON SELLER UNLESS PROVIDED IN WRITING AND SIGNED BY A DULY AUTHORIZED OFFICER OF SELLER.
11. **GENERAL DISCLAIMER.** Without in any way limiting or restricting any of the foregoing, unless otherwise specifically agreed to in writing by an authorized officer of Seller, SELLER SPECIFICALLY OBJECTS TO ALL ADDITIONAL AND DIFFERENT TERMS AND CONDITIONS PROPOSED BY THE PURCHASER INCLUDING, BUT NOT LIMITED TO:
- A. purchase order acceptance, pricing, discounts, shipping, delivery times, delivery methods, invoicing, payment terms, payment methods, rejection, partial shipment, risk of loss, responsibility for goods, changes to any purchase order items, termination or cancellation of purchase orders, potential penalties to or on Seller and indemnification by Seller;
 - B. warranties, whether express or implied, quality assurance, product returns, end-user warranties and other matters related to the quality of the goods or services provided by Seller;
 - C. confidentiality, intellectual property matters, non-disclosure, non-competition, non-solicitation, inventions and other such matters relating to Seller's obligations with respect thereto; and
 - D. force majeure, insurance requirements on Seller, subcontracting by Seller, assignment by Seller, compliance with laws by Seller, limitations on Purchaser's liability, governing law, limitation of Seller's remedies, jurisdiction and venue, merger clauses, and other miscellaneous matters.

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