



A.B.G. RUBBER & PLASTICS LIMITED – TERMS AND CONDITIONS OF SALE

1. Our Contract with You

- 1.1 Your order whether submitted via a purchase order, written acceptance of our quotation or otherwise (**Order**) constitutes an offer by you to purchase goods (**Goods**) from us in accordance with these terms and conditions (**Conditions**). You are responsible for ensuring that the terms of the Order and any applicable specification attached to or referred to in the Order (or otherwise agreed between you and us in writing) relating to the Goods (**Specification**) are complete and accurate.
- 1.2 Your Order shall only be deemed to be accepted when we issue you with a written acknowledgement of the Order at which point and on which date a formal and binding contract between you and us (being A.B.G. Rubber & Plastics Limited registered in England and Wales with company registration number 01202761) shall come into existence in accordance with these Conditions (**Contract**). For the avoidance of doubt: -
- (a) we shall not be required to accept any Order you place with us and any acceptance of an Order shall be at our sole discretion; and
 - (b) save where you pay for the Goods in accordance with clause 8.1, any acceptance of an Order is subject to you having sufficient credit terms with us and your credit terms not having been withdrawn or withheld by us in line with our credit control procedures as are in force from time to time.
- 1.3 If we do not accept your Order, we will inform you of this and we will not process your Order. If you have already paid for the Goods, we will refund you the full amount charged for those Goods as soon as possible.
- 1.4 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.5 You waive any right you might otherwise have to rely on any term endorsed upon, delivered with or contained in any of your documents that is inconsistent with these Conditions.
- 1.6 Any drawings, descriptive matter or advertising produced by us and any descriptions or illustrations contained on our website or in our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 1.7 A quotation for Goods given by us shall not constitute an offer. Unless otherwise stated on the quotation, a quotation shall only be valid for a period of 3 Business Days from its date of issue.

2. Goods

- 2.1 Where we have provided any advice or recommendations to you in relation to the Goods (**Advice**), it is your responsibility to check and verify any such Advice and we shall not be liable to you in relation to any Advice given by us. You are responsible for ensuring that the Goods and any Specification meet your requirements and are suitable for their intended purpose and application (including, without limitation, where you have ordered Goods and/or provided a Specification based on Advice).
- 2.2 Where you have provided us with the Specification and/or provide the design for any Goods, provided that we have manufactured the Goods materially in accordance with the Specification and/or your design, we shall not be liable to you for any defect in the Goods and/or their operation (including without limitation any operational or incompatibility issues).
- 2.3 To the extent that Goods are to be manufactured in accordance with any Specification supplied by you or on your behalf, you shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Specification. This clause 2.3 shall survive termination of the Contract.

3. Delivery

- 3.1 We shall ensure that: -
- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the sales order number, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if we require you to return any packaging materials to us, that fact is clearly stated on the delivery note. You shall make any such packaging materials available for collection at such times as we shall reasonably request. Returns of packaging materials shall be at our expense.
- 3.2 Where you are to collect the Goods from us as indicated in the Order or subsequently agreed by you and us:
- (a) you shall collect the Goods from our premises as indicated in the Order or such other location as may be advised by us to you prior to delivery (**Collection Location**) during our usual working hours (being 9.00am to 4.30pm Monday to Friday excluding public holidays in the UK) within 3 Business Days of us notifying you that the Goods are ready; and

- (b) delivery is completed on the completion of loading of the Goods at the Collection Location.
- 3.3 Where we are to deliver the Goods to you as indicated in the Order or subsequently agreed by you and us:
 - (a) we shall deliver the Goods to the location set out in the Order or such other location as you and us may agree (**Delivery Location**) at any time after we notify you that the Goods are ready;
 - (b) you shall be responsible for the safe unloading of the Goods from the delivery vehicle using a forklift truck operated by a suitably qualified person;
 - (c) our delivery driver may refuse delivery if he or she reasonably considers that you do not have the necessary equipment and/or personnel to safely unload the Goods in which case you shall be deemed to have not accepted delivery and clauses 3.6 and 3.7 below shall apply;
 - (d) notwithstanding anything in these Terms, you shall be liable for any damage to the Goods and/or the delivery vehicle caused by the unloading of the Goods by you; and
 - (e) delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 3.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (as defined in clause 11) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event (as defined in clause 11) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.6 If you fail to take delivery (where you are to collect the Goods from us) or accept delivery (where we are to deliver the Goods to you) of the Goods within 3 Business Days of us notifying you that the Goods are ready, then, except where such failure or delay is caused by our failure to comply with our obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which we notified you that the Goods were ready;
 - (b) we shall store the Goods until delivery takes place, and may charge you for all related costs and expenses (including insurance); and
 - (c) we shall be entitled to charge you our costs for re-delivery.

- 3.7 If 10 Business Days after the day on which we notified you that the Goods were ready for delivery you have not taken (where you are to collect the Goods from us) or accepted (where we are to deliver the Goods to you) actual delivery of them, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs and charge you for any shortfall below the price of the Goods.
- 3.8 If we deliver up to and including 5% more or less than the quantity of Goods ordered by you, you may not reject them, but on receipt of notice from us that the wrong quantity of Goods was delivered, we shall make a pro rata adjustment to the invoice for the Goods.
- 3.9 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

4. International Delivery

- 4.1 Please note that we do not deliver Goods to locations outside of the UK unless we agree otherwise.
- 4.2 If we agree to supply and deliver Goods to you to a location outside the UK: -
- (a) your Order and/or the Goods may be subject to import duties and taxes which are applied when the delivery reaches the relevant destination (please note that we have no control over these charges and we cannot predict their amount);
 - (b) you will be responsible for the payment of all and any import duties and taxes applicable to the relevant Goods (please contact your local customs office for further information);
 - (c) you must comply with all applicable laws and regulations of the country for which the Goods are destined. We will not be liable or responsible if you break any such law and you shall be responsible for ensuring that the Goods and their use comply with all applicable local laws; and
 - (d) you warrant and represent to us that this Contract (including these Conditions) constitutes valid, legally binding and enforceable obligations on you in accordance with its terms (including the terms of these Conditions).

5. Quality

- 5.1 We warrant that on delivery the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification;
 - (b) correspond in all material respects with any sample of the Goods provided by us to you save that the colour of the Goods provided under the Contract may differ slightly to any sample we provide; and

(c) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) you give notice in writing to us within 5 Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) we are given a reasonable opportunity of examining such Goods; and
- (c) you (at our request) return such Goods to our place of business at our reasonable cost,

we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 We shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) you make any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of us following any drawing, design or Specification supplied by you;
- (d) you alter or repair such Goods without our prior written consent; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

5.4 Except as provided in this clause 5, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 Notwithstanding anything in these Conditions, we do not warrant that the Goods comply with any laws, regulations or standards outside the UK.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by us.

6. Title and risk

6.1 The risk in the Goods shall pass to you on completion of delivery (subject to clause 3.3(d))

6.2 Title to the Goods shall not pass to you until the earlier of:

- (a) us receiving payment in full (in cash or cleared funds): -

- (i) for the Goods; and
 - (ii) any other goods that we have supplied to you, in which case title to the Goods shall pass at the time of payment of all such sums,
- (b) you reselling the Goods, in which case title to the Goods shall pass to you at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to you, you shall:

- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify us immediately if you become subject to any of the events listed in clause 10.1(d) to clause 10.1(f); and
- (e) give us such information as we may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) your ongoing financial position.

6.4 Subject to clause 6.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:

- (a) you do so as principal and not as our agent; and
- (b) title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.

6.5 At any time before title to the Goods passes to you, we may:

- (a) by notice in writing, terminate your right under clause 6.4 to resell the Goods or use them in the ordinary course of your business; and
- (b) require you to deliver up all Goods in your possession that have not been resold, or irrevocably incorporated into another product and if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.

7. Price

7.1 The price of the Goods shall be the price set out in the applicable quotation which corresponds to the Order.

- 7.2 All prices quoted by us to you are based and provided on the assumption that these Conditions shall apply. If required, prices and quotes for the provision of Goods outside of these Conditions are available on request.
- 7.3 We may, by giving notice to you at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (b) any delay caused by any instructions given by you or your failure to give us adequate or accurate information or instructions.
- 7.4 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which you shall additionally be liable to pay us at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) includes the costs and charges of packaging, insurance and transport of the Goods (where we are to deliver the Goods to you).
- 8. Payment**
- 8.1 Unless you have a credit account with us, you must pay for the Goods when you submit your Order to us.
- 8.2 Where you do not pay for the Goods in accordance with clause 8.1, we may invoice you for the Goods: -
- (a) where you are to collect the Goods from us, on or at any time after the completion of delivery of the Goods as determined in accordance with clause 3.2(b);
 - (b) where we are to deliver the Goods to you, on or at any time following dispatch of the Goods.
- 8.3 Where we have agreed credit terms with you and subject to our credit control procedures in force from time to time, you shall pay each invoice submitted by us:
- (a) within 30 days of the end of the month in which the date of the invoice falls; and
 - (b) in full and in cleared funds to a bank account specified on the relevant invoice, and
- time for payment shall be of the essence of the Contract.
- 8.4 If you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount at the rate of 6% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due

date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

8.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Limitation of liability

9.1 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

9.3 Subject to clause 9.2, our total liability to you shall not exceed the price of the Goods provided under this Contract.

9.4 Subject to clause 9.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

9.5 This clause 9 shall survive termination of the Contract.

10. Termination

10.1 Without limiting our other rights or remedies, we may terminate this Contract with immediate effect by giving written notice to you if:

- (a) you fail or have failed to pay any amounts due to us under any other contract by the due date for payment or you have otherwise breached or have exceeded any credit terms offered by us;

- (b) the Price of the Goods would cause you to exceed your credit limit with us;
 - (c) you commit a material breach of any term of the Contract and (if such a breach is remediable) you fail to remedy that breach within 10 Business Days of us notifying you in writing to do so;
 - (d) you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on your business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (e) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
 - (f) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting our other rights or remedies, we may suspend provision of the Goods under the Contract or any other contract between you and us if you become subject to any of the events listed in clause 10.1(c) to clause 10.1(f), or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract or any other contract between you and us on the due date for payment.
- 10.4 On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt.
- 10.5 Termination of the Contract shall not affect any of our or your rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. Force majeure

We shall not be in breach of this Contract or liable for any delay in performing, or failure to perform, any of our obligations under this Contract if such delay or failure result from any event or circumstance outside our reasonable control (**Force Majeure Event**). If the period of delay or non-performance continues for 1 month, you may terminate this Contract by giving 2 weeks' written notice to us.

12. General

12.1 Interpretation

In these Conditions:

- (a) A reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email but not fax.

12.2 Assignment and other dealings.

- (a) We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.
- (b) You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights or obligations under the Contract without our prior written consent.

12.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 12.3(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12.4 Entire agreement.

- (a) This Contract constitutes the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between you and us, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.5 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 12.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.8 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to: (1) the address specified in the Order for notices given to you the customer; or (2) finance@oadbyplastics.co.uk for notices to be given to us.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.9 **Third party rights** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.