

Miroad Rubber Limited

Terms and Conditions of Sale

1. Definitions

- 'Miroad Rubber': means Miroad Rubber Limited (company number 2020906) of Showground Road, Bridgwater, Somerset TA6 6AJ;
- 'Conditions': means these terms and conditions of sale;
- 'Contract': any contract between Miroad Rubber and the Customer for the sale and purchase of Goods incorporating these Conditions;
- 'Customer': means the individual, sole trader, partnership or corporate body contracting with Miroad Rubber for the supply of Goods;
- 'Goods': means any goods or products supplied or to be supplied by Miroad Rubber to the Customer;
- 'Force Majeure': means an event beyond the control of Miroad Rubber (or any person acting on its behalf including any manufacturer of or supplier of raw materials for the Goods), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, strikes, or interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

2. Basis of the sale

2.1 Miroad Rubber shall sell the Goods to the Customer subject to these Conditions to the exclusion of any other terms and conditions. No variation to these Conditions or the Contract shall be binding unless agreed in writing between Miroad Rubber and the Customer.

3. Orders and specifications

3.1 Each order or acceptance of a quotation by the Customer for Goods from Miroad Rubber shall be deemed to be an offer by the Customer to buy Goods subject to these Conditions.

3.2 No order placed by the Customer shall be accepted by Miroad Rubber until either a pro forma invoice is issued by Miroad Rubber or (if earlier) Miroad Rubber delivers the Goods to the Customer, at which point a binding Contract shall exist between Miroad Rubber and the Customer for the sale and purchase of the Goods and the Customer may not cancel or amend it without Miroad Rubber's written agreement.

3.3 The price, quantity, quality, description and specification of the Goods shall be those set out in Miroad Rubber's pro forma invoice.

3.4 All samples, drawings, descriptive matter, specifications and advertising issued by Miroad Rubber and any descriptions or illustrations contained in Miroad Rubber's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.5 The customer shall not return any goods to Miroad Rubber, other than by reason of faulty material, without first obtaining authorisation to do so from Miroad Rubber. In the event of such a return, Miroad Rubber will charge a stock handling/administration fee.

4. Price of the Goods

4.1 The price of the Goods (if not set out in the pro forma invoice issued by Miroad Rubber in accordance with clause 3.2) shall be the price listed in the Miroad Rubber published price list, plus VAT and Miroad Rubber's charges for storage, transport, packaging and insurance (hereinafter referred to as "the Price").

5. Terms of payment

5.1 The Customer shall pay the Price forthwith on receipt of Miroad Rubber's pro forma invoice (hereinafter the "Due Date").

5.2 Delivery of the Customer's order will not be made until the Price has been paid in full.

5.3 If the Customer fails to pay the Price by the Due Date then Miroad Rubber may suspend any further deliveries to the Customer and shall be entitled to charge the Customer interest on the amount unpaid at the rate of 4% per annum above Barclays Bank plc base rate. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the amount unpaid, whether before or after judgment. This clause shall not however apply to payments that the Customer disputes in good faith.

6. Delivery

6.1 Subject to the prior receipt by Miroad Rubber in cleared funds of full payment of the Price, the Goods may be collected from Miroad Rubber's premises (after Miroad Rubber has notified the Customer that the Goods are ready for collection), or Miroad Rubber shall deliver the Goods to an agreed place.

6.2 Any dates quoted for delivery are approximate and Miroad Rubber shall not be liable for any direct or indirect loss suffered by the Customer as a result of a delay in delivery.

7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time Miroad Rubber notifies the Customer that the Goods are available for collection or at the time the Goods are delivered to the location agreed in accordance with clause 6.1, whichever shall first occur

7.2 Title to the Goods shall not pass to the Customer until Miroad Rubber has received payment in full of all sums due to it in respect of:

a. the Goods; and

b. all other goods agreed to be sold by Miroad Rubber to the Customer for which payment is due.

7.3 Until such time as title in the Goods passes the Customer shall hold the Goods as Miroad Rubber's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties, properly stored protected and insured and identified as Miroad Rubber's property.

7.4 Until title in the Goods passes Miroad Rubber shall be entitled at any time to require the Customer to deliver up the Goods to Miroad Rubber and if the Customer fails to do so forthwith to enter the Customer's premises or the premises where the goods are stored and repossess the Goods.

7.5 The Customer shall not be entitled to pledge or charge any Goods belonging to Miroad Rubber by way of security for any indebtedness but if the Customer does all monies owing by the Customer to Miroad Rubber shall immediately become payable.

8. Warranties and Liability

8.1 Subject to payment in full of the Price Miroad Rubber warrants that the Goods will be free from defects in material and workmanship at the time of delivery.

8.2 Nothing in these Conditions shall be construed as limiting the parties' liability for death or personal injury due to either party's negligence.

8.3 Subject to clause 8.2, warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 A claim by the Customer based on the quality of or a defect in the Goods or their failure to correspond with specification must be notified to Miroad Rubber in writing within 3 days from the date of delivery. Any aesthetic defect will only be considered to be a defect if it is visible when viewed from a normal standing position. If delivery is not refused and the Customer does not notify Miroad Rubber of defects in accordance with this clause 8.4 the Customer shall not be entitled to reject the Goods.

8.5 Subject to clause 8.2, Miroad Rubber shall have no liability to the Customer for a defect in the Goods which is apparent from inspection (including but not limited to size, colour, flashing patterns or texture) if the Goods have been cut processed installed or otherwise altered from the condition in which they were delivered.

8.6 Where a valid claim in respect of the Goods is notified to Miroad Rubber in accordance with these Conditions Miroad Rubber shall be given adequate facilities for the inspection and testing of the Goods and shall be entitled to replace the Goods in question or refund the Price to the Customer, and Miroad Rubber shall have no further liability to the Customer except as provided for in clause 8.2.

8.7 Subject to clause 8.2, Miroad Rubber shall not be liable to the Customer for:

a. loss of profit;

b. loss of business; or

c. loss of goodwill

in each case whether direct or indirect, or any claim for consequential loss howsoever caused that arises out of or in connection with the Contract.

8.8 Miroad Rubber shall not be liable to the Customer for any failure or delay in performing Miroad Rubber's obligations under the Contract if the delay or failure was due to an event of Force Majeure.

8.9 Subject to clause 8.2, Miroad Rubber's total liability to the Customer shall not exceed the Price.

9. Insolvency of the Customer

9.1 If the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation or an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer or the Customer ceases or threatens to cease to carry on business or Miroad Rubber reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer then Miroad Rubber shall be entitled to suspend any further deliveries without any liability to the Customer and if the Goods have been delivered but not paid for the Price shall become immediately due and payable.

10. General

10.1 Any notice required to be given under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.

10.2 No waiver by Miroad Rubber of any breach of these Conditions shall be considered as a waiver of any subsequent breach of the same or any other Condition.

10.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

10.4 The Contract and these Conditions shall be governed by the laws of England and the parties agree to submit to the jurisdiction of the English courts