



General terms of sale and delivery

December 2012

I. Applicability / quotations / conclusion of contract

1. These general terms of sale and delivery shall apply for deliveries and other performances for all contracts with companies, corporate bodies under public law, and special funds under public law, including prospective contracts. Any differing conditions of the Buyer are hereby objected. If the Buyer is not in agreement with this treatment, he must immediately object in a separate letter. In this case, a contract is only concluded with us if, after receipt of the objection, we expressly consent to the invalidity of our terms of sale and delivery. Our quotations are subject to change and are not binding for us. Contracts are only concluded based on our written order confirmation. Verbal agreements, promises, assurances and guarantees of our employees in connection with the conclusion of the contract only become binding through our written confirmation. Any later deviations must also be in writing. Quotation documents such as prospectuses, drawings, material enclosures and the like remain our property. They are covered by the copyright protection. Disposals of these materials require our written consent in order to be effective.
2. The Incoterms in their latest version shall be authoritative for the interpretation of terms of trade if there is any doubt.
3. All information, such as dimensions, weights, illustrations, descriptions, installation diagrams, and drawings, in sample books, price lists, in files and/or 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.
4. The "Buyer" in the context of these terms is also the "Purchaser" for contracts for works and labor.
5. Tools, molds, or other auxiliary materials that are necessary for execution of the order, that we have manufactured or acquired, 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.

6. We expressly reserve the right to reject orders with an invoice value of less than € 125.00 per item. If the invoice value is lower, we are entitled to charge this minimum fee for the order.

II. Prices

1. The prices are stated excluding the statutory value added tax, are ex works or warehouse in Erkrath/FRG and exclude freight (FCA Erkrath/FRG).
2. Provided that no other agreements have been made, the prices and conditions of our price list that is in effect 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 are entitled 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 more than four weeks after the contract is concluded 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. Increases of more than 5% in relation to the net price are considered significant. In this case, the Buyer is entitled to withdraw from the contract, with the exclusion of more extensive rights, within two weeks after receiving notification of the price increase.

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 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 Buyer. The Buyer shall only be authorized to withhold or offset if Buyer'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 reserve the right to enforce additional damages if payment is in arrears.
3. The Buyer 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 Buyer 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 due dates for outstanding receivables differ, our outstanding receivables shall be due at the latest by the due date of our liability and settled on the value date.
5. If it becomes apparent after conclusion of the contract that payment of our claims is in danger due to inability of the Buyer to pay, then we shall retain the rights under § 321 of the German Civil Code (Objections Due to Uncertainty). We shall then also be entitled to declare all claims, not barred by the statutes of limitation arising from the ongoing business relationship with the Buyer, immediately payable. 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 Buyer.

6. An agreed discount shall always be based on the invoice value exclusive of freight, provided that the Buyer has made complete payment for all of the Buyer'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 commence after the complete clarification of the order and the transmission 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 Buyer, such as provision of all documents, drawings and all government agency certifications, presentation of letters of credit and guarantees, or remittance of advance payments. The delivery time is a reference point, which may be slightly undercut or exceeded, unless a fixed date has been expressly agreed upon.
2. The delivery period shall be considered to be met if the shipment has left our plant, or if we have notified the Buyer of our readiness-to-ship within the agreed period.
3. We will strive to comply with delivery periods to the extent possible. If we are prevented from making deliveries due to force majeure, labor disputes, riots, lack of energy, work restrictions, loss of means of transportation, disturbances in our operation or the operation of our suppliers or similar circumstances, which could not be avoided by us with reasonable care, we shall be absolved of our obligations for the duration of these circumstances. If due to the events cited above, execution of the contract 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 entitled to declare withdrawal from the contract. If delivery becomes impossible due to such circumstances, our obligation to perform is cancelled. The legal provisions apply.
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 Partial shipments and partial invoices are permitted.

V. Retention of title

1. All delivered goods shall remain our property (goods subject to retention of title) until all outstanding receivables have been paid, 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 on specially designated receivables. This retention 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 goods processed shall be considered to be goods subject to retention of title as set forth 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 Buyer, we shall be entitled to a pro rata co-ownership share in the new object in such proportion as the invoiced value of the retention of title goods bears to the invoiced value of the other goods used. If our ownership ceases due to combination or mixing, the Buyer shall assign to us, now and in advance, all such ownership rights in the new item or object as the Buyer is or would be entitled to assert, to the extent of the invoiced value of the goods subject to retention of title, and the Buyer shall gratuitously store the same for us; our co-ownership rights shall be deemed to constitute goods subject to retention of title as set forth in no. 1.
3. The Buyer shall only sell the goods subject to retention of title in the ordinary course of business at Buyer's normal terms and conditions of business and only if Buyer is not in arrears, and provided that the receivables arising from Buyer's resale are assigned to us in accordance with numbers 4 to 6. The Buyer is not be entitled 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 Buyer 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 Buyer 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 Buyer shall assign a share corresponding to our right of co-ownership. If Buyer uses the goods subject to retention of title to perform a contract for works and labor, then the Buyer's claim arising from the contract for works and labor shall be assigned to us in advance in the same scope.

5. The Buyer 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 Buyer 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 Buyer is at risk due to Buyer's lack of ability to pay. At our request, the Buyer shall be obligated to inform Buyer's customers of the assignment to us and to hand over the documents to us 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 Buyer shall be obligated to report to us any attachment or other impairments through third parties without delay. The Buyer 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 Buyer is in arrears with payment or if the Buyer fails to honor a bill of exchange upon maturity, we shall be entitled to take back the goods subject to retention of title and, if necessary, to enter the Buyer'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 other contracts with the Buyer is at risk due to the Buyer's lack of ability to pay. The take back shall not constitute rescission of the contract. Regulations of the German Bankruptcy code shall remain 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 upon the Buyer's request to release such securities as we may select.

VI. Quality levels, dimensions, and weights

1. The applicable quality levels and dimensions for the conclusion of the contract shall be determined based on the applicable DIN/EN standards and material sheets, 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, specifications for dimensions, surface structure, and surface quality on the basis of the WDK (Wirtschaftsverband der Deutschen Kautschukindustrie) guidelines for rubber rollers, as well as applicable DIN/EN 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 any arising or already existing defects.
5. If Buyer 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 upon, it can only be executed in the delivering plant or at our warehouse immediately after the readiness for the acceptance is reported. The personnel costs associated with acceptance shall be borne by the Buyer; the technical acceptance costs shall be billed to the Buyer 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, we are entitled to ship the goods without acceptance, or to store the goods at the cost and risk of the Buyer and to bill the Buyer.

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 in the intended timeframe becomes impossible or significantly more difficult, then we are entitled to deliver via a different route or to a different location; the Buyer shall be responsible for any additional costs incurred. The Buyer will be given opportunity to comment beforehand.

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 Buyer. We will provide insurance only at the instruction and cost of the Buyer. The obligation and costs for unloading shall be the responsibility of the Buyer.

4. We will provide for packaging, protection, and/or auxiliary transport aids, in accordance with our experience, at the expense of the Buyer. Packaging, protection, and/or auxiliary transport aids shall be taken back to our warehouse. We are not responsible for the Buyer's costs for return transport, or for the Buyer's costs for disposal of the packaging.
5. We are entitled to make partial shipments within a reasonable scope. Overshipments and undershipments relative to the agreed quantity that are usual for the industry are permissible.
6. On the Purchaser's request and at the Purchaser's expense, we will insure the shipment against theft, breakage, transport damage, fire damage, and water damage.

IX. Call orders

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

mediate 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 Buyer, notification of material defects that were identifiable via the agreed type of acceptance shall be excluded.
3. With legitimate, timely notification of defects, we shall be authorized to eliminate the defect or deliver a defect-free object (supplementary performance) at our discretion. If the rework fails twice or if the supplementary performance is refused, the Buyer shall be authorized to reduce the purchase price, or after specification and expiration of an appropriate grace period, the Buyer shall be authorized to rescind the contract. If the defect is not significant, the Buyer shall only be authorized to reduce the purchase price.

If the Buyer does not give us immediate opportunity to convince ourselves of the material defect, particularly if Buyer does not make the goods or the samples that are the object of the complaint immediately available, we shall be entitled to refuse the supplementary performance. As long as the Buyer does not give us the opportunity to check the existence of the defect inspected and therefore the possibility of supplementary performance, the Buyer can also not demand a reduction of the purchase price, cancellation of the contract or damages. We are not responsible for any more extensive damage that arises due to the Buyer refusing to allow us to examine the claimed defect.

4. For goods that have been sold as declassified material, - e.g. so-called IIa material (secondaries) - the Buyer shall have no rights relative to the specified reasons for the declassification, and such that could normally be expected, arising from material defects.
5. We shall be responsible for expenses associated with supplementary performance 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 Buyer, unless this measure corresponds to the contractual use of the goods.

6. The Buyer's rights of recourse in accordance with Article 478 of the German Civil Code (BGB) shall remain hereby unaffected.
7. 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 Buyer.
8. The Purchaser shall bear the responsibility for delivering faultless roller cores and other pre-products to us. If additional expenses result from the faulty condition of the roller body, then these additional expenses shall be invoiced separately to the Purchaser. This shall particularly apply for bonding properties of the roller bodies delivered to us.
9. For metal surfaces that have been finished, such as e.g. roller studs, discolorations can occur due to the manufacturing process of the coating, which do not impair the function. We cannot assume any liability for this occurrence.

The Purchaser is responsible for ensuring that the metal surfaces provided by him are suitable for the vulcanization process (also in so-called "saturated steam"). If there is any doubt, the Purchaser must expressly indicate this. We cannot assume any liability if the metal surfaces are not suitable or if no indication was made.
10. The Purchaser shall inspect the products that we have delivered for any faults immediately 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.
11. The Purchaser shall provide us with the required time and opportunity for execution of any rectification of defects and replacement deliveries.
12. 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, chemical or thermal influences to the materials that we have delivered.

13. 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.
14. 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 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 hereby remain unaffected.**
3. If nothing to the contrary is agreed, then contractual claims that the Buyer has against us for cause, or that arise in conjunction with the delivery of goods, shall expire one year after delivery of the goods. Claims due to hidden defects shall expire within the statutory period. This limitation period of one year after delivery 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 Buyer shall be governed by the substantive laws of the Federal Republic of Germany supplementing these terms of sale and delivery. Application of the UN convention on contracts for the international sales of goods (CISG) dated April 11th, 1980 shall be excluded.

XIII. Bindingness of these terms of sale and delivery, transferability of the rights

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

XIV. Miscellaneous

1. If a Buyer located outside of the Federal Republic of Germany (foreign Buyer), or his authorized agent, picks up goods or conveys or ships said goods to a foreign country, then the Buyer must provide to us the required certificate of export for tax purposes. If this certificate is not provided, the Buyer 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 Buyer shall be obligated to communicate his VAT ID number, under which Buyer is subject to purchase taxation within the EU, prior to delivery. Otherwise the Buyer 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 Buyer 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 of delivery and payment is ineffective or becomes ineffective then, this shall not affect the effectiveness of the other conditions.

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Mitex Gummiwerke Hans Knott GmbH & Co Kg

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