

Holz Rubber Company, Inc. Standard Terms and Conditions of Sale

UNLESS OTHERWISE AGREED TO IN WRITING, THE FOLLOWING PROVISIONS APPLY TO ALL SALES:

1. WARRANTY. All merchandise ordered shall be sold subject to Holz Rubber Company's (SELLER) standard warranty. SELLER warrants that any product of its manufacture, which upon examination is found by a SELLER'S representative to be defective either in workmanship or material whereby it is not suitable under proper usage and service for the purpose for which designed, will be, at SELLER'S option, repaired or replaced free of charge including transportation charges but not cost of installation, provided that, SELLER receives written claim specifying the defect within one year after seller ships the product. THE WARRANTY HEREIN IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED AND WITHOUT LIMITING THE FOREGOING, SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSES. The foregoing expresses all of SELLER'S obligations and liabilities with respect to the quality of items furnished by it and it shall under no circumstances be liable for consequential damages.

2. ORDER ACCEPTANCE BY SELLER.

a. All orders received from BUYER are subject to acceptance by SELLER, unless quotation specifies that it is a bid in response to an invitation for bids in which event the order or award shall constitute acceptance of the bid in accordance with the bid terms.

b. Terms and conditions on the BUYERS order form, at variance with terms and conditions stated herein, are binding upon SELLER only if specifically accepted by SELLER in writing.

c. Orders accepted by SELLER cannot be cancelled by BUYER **except** with SELLER'S written consent and upon terms that will indemnify SELLER against loss.

3. QUANTITY VARIANCES. SELLER reserves the right to ship and BUYER agrees to accept an under – or – over – run of any quantity up to and including 5% of the quantity ordered by BUYER.

4. SAMPLES. In the event samples are furnished to BUYER, SELLER will not assume any liability in connection with the furnishing or use thereof and there will be no agreement of warranty collateral to, or affecting, the furnishing of such samples.

5. PRICE AND PAYMENT.

a. Unless otherwise stated, legal delivery and prices are F.O.B. SELLER'S plant and prices do not include transportation charges.

b. **Taxes Not Included in Price:** Except where otherwise prohibited by law, all sales, excise, use or similar taxes or charges by the federal, any foreign or any state or local government, which SELLER may be required to pay or collect, shall be in addition to price stated and shall be paid by BUYER, unless valid exemption certificate is furnished therefore.

c. **Payment:** All accounts are payable in 30 days from the date of invoice. Interest will be charged on accounts more than 30 days past due at the rate of 1 ½% per month. In the event of legal actions instituted to collect delinquent invoices or accounts, the prevailing party shall be awarded reasonable attorney fees and costs incurred to collect the account balance. SELLER may demand payment in advance of shipment, if in SELLER'S opinion, the credit or financial condition of BUYER is, or is about to become, impaired.

d. **Payments Where Shipments are delayed:** Where BUYER requires delay in shipment, SELLER shall have the option of billing for goods when ready for shipment. If material is not ordered out within sixty (60) days after goods are ready, SELLER will have the option of billing storage charges.

6. DELIVERY.

a. **Shipping Dates:** Shipping dates are approximate only and subject to change.

b. **Unforeseen Delays:** SELLER shall not be liable in damages or otherwise for delays or failure in performance when caused by circumstances, of every nature and description and however arising, beyond SELLER'S reasonable control. In the event that SELLER is unable due to any such occurrence or otherwise, to fulfill its total commitments to all customers. BUYER agrees to accept, as full and complete performance by SELLER, deliveries in accordance with such plan or proration as SELLER may adopt.

c. **Packaging:** SELLER will provide commercial packaging adequate, under normal conditions, to protect the goods in shipment and identify the contents. Should BUYER request any special packaging, it will be done at BUYER'S expense.

d. **Routing:** All goods will be shipped via the cheapest or most expeditious means of transportation under the circumstances, unless BUYER indicates otherwise. If BUYER provides no routing instructions, SELLER shall be the sole judge of the best method of routing shipment.

e. **Claims:** Claims for loss or damage in transit must be entered and prosecuted by the BUYER.

7. SPECIAL TOOLING. All special tooling required to produce the goods shall remain the property of SELLER unless specific arrangements are otherwise made. In any case; SELLER'S responsibility is limited to proper design, proper handling in manufacture and storage, and adequate insurance. The BUYER is responsible for costs resulting from: (1) alterations requested by him, (2) major repairs or replacement caused by normal wear, (3) additional costs incurred when new factors are introduced such as shorter lead time and/or increased rate of delivery.

The term "Special Tooling" shall include such items as molds, dies, forms, jigs, mandrels, fixtures and other special equipment, except machinery which is required to produce the goods.

8. INSPECTION. SELLER will inspect all goods prior to shipment and such inspection will be adequate to meet SELLER'S standards for dimensional and visual characteristics.

9. REJECTIONS AND RETURNS.

a. **Notification to SELLER:** BUYER will be deemed to have inspected and accepted any shipment under this contract, if within fifteen days after BUYER'S receipt of goods, BUYER has not notified SELLER in writing that such goods are rejected and the grounds therefore.

b. **Return of Goods:** No goods may be returned by BUYER for any reason without SELLER'S prior written approval and valid RMA number.

10. LIABILITY AND SPECIAL DAMAGES: BUYER agrees that Buyer's exclusive remedy for any default hereunder or any act of omission of SELLER related to designing, manufacturing, delivering, installing or operations of goods shall be subject to the terms and conditions contained herein and shall be one of the following at the option of the SELLER: (a) repair or replacement of goods or (b) repayment to BUYER of the purchase price. IN NO EVENT SHALL BUYER BE ENTITLED TO ANY DAMAGES FOR LOST PROFITS OR ANY CONSEQUENTIAL, INCIDENTAL OR CONTINGENT DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING OUT OF BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR IN ANY WAY RELATED TO GOODS SOLD, DELIVERED, OR SERVICED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.

11. PATENT INFRINGEMENT.

a. Should the goods furnished by SELLER be of such a nature that the design therefore is supplied by BUYER, or should the goods be labeled or marked with a trademark or trade name requested by BUYER, then BUYER agrees to defend SELLER in any action, either civil or criminal, brought against SELLER by any third party, for the infringement or misuse of any such patents or trademarks, and BUYER further agrees to hold SELLER harmless from any damage or loss resulting there from.

b. As to any of the goods manufactured according to design or specification furnished by BUYER, SELLER shall indemnify and save harmless BUYER from any claim that any use or resale of the same in and of itself infringes any U.S. patent or patent right if the BUYER within thirty (30) days notifies SELLER in writing of any such claim and gives SELLER authority, information and assistance (at SELLER'S expense) to dispose of such claim and to defend any suit that may be brought against the BUYER or BUYER'S customer thereon. In that event SELLER will, at its expense, defend any such suit and satisfy any judgment therein to an amount not exceeding the price paid SELLER for said goods held to infringe. If, in any such suit, an injunction is issued against the further use of the said item or any part thereof. SELLER will at its option and expense, either procure for the customer the right to continue using said goods, or replace the same with non – infringing goods, or modify them so that they become non – infringing, or remove said goods and refund the purchase price and transportation and installation costs thereof. SELLER shall not be liable in any respect except as aforesaid, including without limitation, for any claim or infringement settled by BUYER without SELLER'S consent. The foregoing expresses all of SELLER'S obligations and liabilities as to patents.

12. GENERAL PROVISIONS

a. **Modifications of Contract:** It is agreed that there is no other contract in force between BUYER and SELLER and no alteration shall be binding unless agreed to in writing by SELLER. Should SELLER by any words, acts or writing, waive or be deemed to have waived any of the provisions of this agreement, or should SELLER fail to insist upon performance BUYER of one or more of the terms herein, such action or failure on SELLER'S part will in no way be deemed to imply or constitute a waiver of any other terms contained in this agreement.

b. **Compliance with Laws:** SELLER certifies compliance with all relevant Federal, State and local laws including the Fair Labor Standards Act as amended.

c. **Notice:** Any notice required or permitted to be given hereunder shall be in writing, faxed, e-mail or sent by registered mail to the either party at its business address as last notified in writing. Any notice sent by fax or e-mail shall be deemed to have been given on the date on which it is sent.

d. **Force majeure:** Seller shall be free from any liability for delay or failure in shipment arising from strikes, lockouts, accidents, perils of sea, fire, earthquakes, acts of nature, civil unrest, war, consequences of war, governments acts, restrictions of requisitions, failure of manufacturers or suppliers to deliver, bankruptcy, or insolvency of manufacturers or suppliers, suspension of shipping facilities, acts or defaults of carrier or any other contingency of whatever nature beyond SELLER'S control. In such a situation if shipment or deliver is not made during the period contacted for, BUYER shall accept delivery under this contract when shipment is made provided however, BUYER shall not be obligated to accept delivery if shipment is not made within a reasonable time after the cessation of the aforementioned impediments or causes.