

GENERAL TERMS AND CONDITIONS - MIDWEST RUBBER EUROPE BV

1. Definitions

- **Offer:** An oral or written offer of a Product.
- **General Terms and Conditions (GTC):** The General Terms and Conditions of Midwest Rubber Europe BV (MWRE).
- **Ex Works (Non-Delivered Duty Paid):** Transportation costs are borne by the Customer, and the risk of the Product passes to the Customer from the moment the Product is made available to the carrier (Ex Works).
- **Delivered (Freight Paid):** Transportation costs are borne by MWRE, and the risk of the Product passes to the Customer when the Product is delivered to the agreed delivery address.
- **Customer:** The purchaser.
- **Midwest Rubber Europe BV (MWRE):** The seller/contractor.
- **New Property:** Any movable or immovable property of which the Product becomes an integral part following delivery to the Customer.
- **Quotation:** A written offer issued by MWRE to enter into an agreement.
- **Agreement:** A written document specifying, at a minimum, which Product MWRE will supply and the price to be paid by the Customer.
- **Parties:** MWRE and the Customer.
- **Product:** A movable item, often a machine component, manufactured according to the Customer's specifications or according to MWRE's drawings and specifications, consisting of rubber, elastomers, polymers, plastics, composites, metals, and/or other materials, whether or not combined with one another.
- **Damage:** Direct damage.
- **In Writing:** Includes communications made electronically, provided that the authenticity of the communication and the identity of the sender can be sufficiently established.
- **Default:** (a) Failure to properly perform an obligation within the agreed period; or (b) circumstances in which the creditor must conclude from a statement or conduct of the debtor that the debtor will fail to perform its obligation.

- **Breach of Contract:** Failure to properly perform an obligation under the Agreement while in default. There is no breach of contract where there is a legal justification or where the breach cannot be attributed to the defaulting party.

2. Applicability of the General Terms and Conditions

- a. These General Terms and Conditions apply to every Agreement.
- b. These General Terms and Conditions also apply to all offers and quotations issued by MWRE.
- c. The applicability of any general terms and conditions of the Customer is expressly rejected.
- d. These General Terms and Conditions are also stipulated for the benefit of all persons employed by MWRE, the directors of MWRE, and all affiliated legal entities.

3. Quotations and Offers

- a. All offers and quotations are non-binding unless expressly stated otherwise.
- b. All illustrations, drawings, and Product information are provided as accurately as possible but are binding on MWRE only if they are expressly incorporated into a binding quotation or the Agreement.

4. Formation of the Agreement

- a. An Agreement is concluded:
 - upon the Customer's written and unconditional acceptance of a non-binding offer or quotation issued by MWRE, provided that MWRE subsequently confirms such acceptance in writing; or
 - upon the Customer's written and unconditional acceptance of a binding offer or quotation issued by MWRE.
- b. Any additions or amendments made after the Agreement has been concluded shall be binding only if they have been made in writing and signed by both Parties.

5. Prices

- a. Prices stated in an offer, quotation, or Agreement are expressed in Euros (€) and are exclusive of VAT.
- b. Costs relating to transportation, packaging, containers, import and export duties, terminal charges, security charges, customs clearance, insurance, VAT, and any other taxes or levies shall be borne by the Customer unless otherwise agreed in writing.

c. If, after the Agreement has been concluded, the costs of materials, packaging, raw materials, semi-finished products, wages, transportation, insurance premiums, exchange rates, or any other factors affecting the price of the Product change, MWRE shall be entitled to increase its prices accordingly. Such a price increase shall not entitle the Customer to terminate the Agreement unless the increase exceeds fifteen percent (15%) of the original agreed price.

d. All prices for MWRE Products shall be indexed and/or adjusted annually as of January 1 in accordance with the applicable price index published by the Dutch Central Bureau of Statistics (CBS), or its legal successor.

6. Delivery

a. MWRE shall be deemed to have completed delivery of the Product when the Product is made available to the carrier at MWRE's warehouse or manufacturing facility. From that moment onward, all risk relating to the Product shall pass to the Customer.

b. No rights may be derived from stated delivery times. If MWRE depends on information to be provided by the Customer, the delivery period shall commence only after such information has been received.

c. Exceeding the stated delivery time shall not entitle the Customer to terminate the Agreement, refuse payment, or otherwise fail to fulfill its obligations. Nor shall any delay in delivery obligate MWRE to compensate the Customer for any damages, regardless of the legal basis thereof.

d. Unless otherwise agreed, the Product shall be sold **Ex Works (non-freight paid)**. In such cases, delivery shall take place when the Product is made available to the carrier at MWRE's warehouse or place of business. From that moment onward—including during transportation—all risk relating to the Product shall rest with the Customer. Unless otherwise agreed, MWRE shall have sole discretion in selecting the method of loading, means of transport, freight forwarder, or carrier.

e. By way of exception to subsection (d), the Product shall be sold **freight paid** only where expressly agreed in the Agreement. In that case, delivery shall occur when the Product is tendered at the agreed delivery address. During transportation, the risk relating to the Product shall remain with MWRE. Unless otherwise agreed, MWRE shall have sole discretion in selecting the method of loading, means of transport, freight forwarder, or carrier.

f. If the Product cannot be delivered, or cannot be delivered on time, due to circumstances beyond the responsibility or risk of MWRE, MWRE shall be entitled to charge the Customer for any additional costs incurred, including but not limited to storage costs.

g. MWRE reserves the right to deliver up to ten percent (10%) more or less than the quantity ordered.

- h. Where the Customer has specified particular dimensions, a manufacturing tolerance of five percent (5%) shall be permitted.
- i. Color variations that do not exceed normal color shades shall not constitute a defect. The Customer may not reject delivery on that basis, nor shall such variations constitute grounds for termination of the Agreement or a claim for damages.
- j. The Customer shall inspect the delivered Product immediately upon delivery for quantity, quality, specifications, and any other deviations from the Agreement.
- k. MWRE shall only accept returned Products with its prior approval and only if the return shipment is made freight prepaid.

7. Retention of Title

- a. The Product, whether already delivered or yet to be delivered, shall remain the property of MWRE until all claims of MWRE against the Customer, including the claims referred to in Article 3:92(2) of the Dutch Civil Code, together with any accrued interest and extrajudicial and judicial costs, have been paid in full.
- b. If the Customer incorporates a Product that is subject to retention of title into a New Property, the Customer shall be deemed to have created such New Property on behalf of MWRE and shall hold the New Property for MWRE. Ownership of the New Property, including the incorporated Product, shall transfer to the Customer only once the retention of title has ceased.
- c. Until ownership of the Product or the New Property has passed to the Customer, the Customer shall not sell, encumber, transfer, or grant any rights in respect of the Product or the New Property to third parties.
- d. At the first request of MWRE, the Customer shall cooperate in establishing a security interest (pledge) over any claims the Customer has or acquires against third parties arising from the resale or onward supply of the Product or the New Property.
- e. The Customer shall exercise due care in maintaining any Product subject to retention of title, treat it as a prudent custodian, and clearly identify it as the property of MWRE. The Customer shall insure the Product for its invoice value and, upon MWRE's first request, provide the names and addresses of the insurers together with copies of the applicable insurance policies.
- f. MWRE shall be entitled to repossess any Product delivered under retention of title if:
- the Customer is in default with respect to payment of MWRE's invoices;
 - MWRE reasonably concludes, based on a statement or conduct of the Customer, that the Customer will not satisfy its payment obligations; or

- the Customer has lost the unrestricted authority to dispose of its assets.

g. The Customer shall at all times grant MWRE unrestricted access to its premises and/or buildings for the purpose of inspecting the Product and exercising its rights under the retention of title.

8. Ownership

a. All drawings, models, molds, forms, tooling, and any other materials prepared by or on behalf of MWRE in connection with the performance of the Agreement shall remain the exclusive property of MWRE, even where the Customer has been charged for such items.

b. The Customer shall ensure that such drawings, models, and other documents are not reproduced, disclosed, or made available to third parties. If the Customer breaches this obligation, it shall be liable for all resulting damages suffered by MWRE.

9. Claims and Complaints

a. Complaints regarding the Product must be submitted to MWRE in writing within fourteen (14) days after delivery of the Product. After this period has expired, the Product shall be deemed to have been irrevocably and unconditionally accepted by the Customer.

b. Any legal action arising from a complaint must be commenced before the competent court within one (1) year after the timely written complaint has been submitted, failing which the claim shall lapse.

c. The burden of proving that a complaint was submitted timely and in writing rests with the Customer. The Customer also bears the burden of proving that the Product is the same Product delivered by MWRE and that it remains in the same condition as at the time of delivery.

d. A complaint regarding the Product shall not suspend the Customer's payment obligations.

e. Variations in the Product relating to quality, dimensions, color, texture, gloss, protective coating, or similar characteristics that are technically unavoidable or commercially acceptable shall not constitute grounds for a valid complaint or breach of contract.

f. In the event of a complaint, MWRE must be given the opportunity to inspect the Product in its original condition and original packaging. Only Products returned at MWRE's request and for which MWRE has accepted the complaint shall be accepted. In such cases, the return shipment shall be at MWRE's expense and risk.

g. Where a complaint is proven by the Customer and accepted by MWRE as valid, MWRE shall, at its sole discretion, either replace the Product or issue a credit for the corresponding invoice. This remedy shall be exclusive, and the Customer shall not be entitled to any other

compensation or damages, except in cases of intentional misconduct or willful recklessness on the part of MWRE.

10. Liability

a. Under no circumstances shall MWRE be liable, on any legal basis whatsoever, for indirect damages.

b. **Indirect or consequential damages** include all damages other than personal injury, death, or damage to property. Examples include, but are not limited to, loss of profit or revenue, delay damages, lost savings, business interruption, loss of data, or corrupted data.

c. MWRE's liability shall be limited to **direct damages** only.

d. **Direct damages** are limited to the costs of repairing or replacing the Product (property damage), personal injury, or death.

e. Where MWRE is liable for direct damages, such liability shall be limited to the total amount invoiced to the Customer during the calendar year in which the event giving rise to the liability occurred.

f. If a court determines that the limitation of liability referred to in subsection (e) is unenforceable or invalid, MWRE's liability for direct damages shall in no event exceed the amount actually paid under MWRE's product liability and general liability insurance policy, plus the applicable deductible. MWRE maintains product liability and general liability insurance with **ASR Schadeverzekeringen** under policy number **5410A38404766** and undertakes to pay the applicable insurance premiums in full and on time.

g. MWRE shall not be liable for any direct or indirect damages resulting from legal or governmental requirements imposed on the Product.

h. MWRE shall not be liable for any direct or indirect damages resulting from a breach of contract or wrongful act committed by third parties engaged by MWRE, with the Customer's consent, to supply materials or perform services.

i. The foregoing limitations of liability shall not apply in cases of intentional misconduct or willful recklessness by MWRE. The burden of proving such intentional misconduct or willful recklessness rests with the Customer.

11. Force Majeure

a. In the event of force majeure, MWRE shall, at its sole discretion, be entitled to suspend performance of the Agreement, in whole or in part, or to terminate the Agreement, in whole or in part, without the Customer being entitled to any compensation or damages.

b. Force majeure shall include, but is not limited to:

- natural disasters;
- war;
- power outages;
- transportation disruptions;
- blockades (including ransomware attacks);
- import or export restrictions;
- governmental measures;
- delays or interruptions in the supply of raw materials or machine components;
- shortages of shipping capacity;
- labor shortages;
- fire at MWRE's facilities;
- business interruptions or defaults by suppliers (including cloud service providers and software vendors);
- insufficient supplies of raw materials or components; and
- any other circumstances that disrupt the normal course of MWRE's business and make performance of the Agreement unreasonable to expect.

c. If MWRE is unable, due to force majeure, to perform all or part of its obligations under the Agreement, MWRE shall have the right either to perform those obligations at a later date or to terminate the Agreement, in whole or in part, without judicial intervention.

d. In the event of partial termination, the Customer shall remain obligated to pay the agreed purchase price in proportion to the portion of the Agreement that has been performed.

12. Warranty / Service

a. If, following delivery, the Product is found to contain a defect resulting from faulty manufacture, MWRE shall, at its sole discretion, either repair or replace the Product. MWRE shall not be liable for any additional costs incurred by the Customer, regardless of their nature.

b. The warranty described in subsection (a) shall not apply if the Customer has modified the delivered Product, carried out repairs, or used the Product for purposes other than its intended normal use.

- c. Within fourteen (14) days after discovering, or reasonably having been able to discover, the defect, the Customer must notify MWRE of the defect in writing (complaint). The Product must remain in its original, unaltered condition until MWRE has investigated the complaint.
- d. The Customer shall indemnify and hold MWRE harmless against all third-party claims relating to the delivered Product or Service, unless it has been legally established that such claims are the direct result of gross negligence on the part of MWRE and the Customer demonstrates that no blame whatsoever can be attributed to the Customer.
- e. The Customer shall maintain adequate commercial general liability insurance covering liability arising from products supplied by the Customer to third parties in which the Product forms an integral component.

13. Payment

- a. The Customer shall pay all invoices issued by MWRE within thirty (30) days of the invoice date.
- b. Any complaints or disputes regarding invoices must be submitted to MWRE in writing within eight (8) days of the invoice date. After this period has expired, the invoice shall be deemed to have been irrevocably and unconditionally accepted by the Customer.
- c. Any legal action relating to an invoice complaint must be commenced before the competent court within six (6) months after a timely written complaint has been submitted, failing which the right to bring such action shall lapse.
- d. If the Customer fails to pay an invoice in full and on time, the Customer shall be in default without any notice of default being required. During the period of default, the Customer shall owe interest at the rate of one percent (1%) per month on the outstanding invoice amount or, if higher, the applicable statutory commercial interest rate.
- e. In the event of default, MWRE shall be entitled to suspend all of its obligations toward the Customer, regardless of whether such obligations arise under the Agreement, by law, or in tort.
- f. In the event of default, MWRE shall also be entitled to terminate the Agreement, in whole or in part, without judicial intervention. The Customer shall be liable for all damages incurred by MWRE as a result thereof.
- g. In the event of default, all extrajudicial and judicial costs incurred in establishing liability and damages, collecting payment, recovering interest on the principal amount, and any other related costs shall become immediately due and payable. Extrajudicial collection costs shall amount to fifteen percent (15%) of the principal amount, with a minimum of **€500**, plus any out-of-pocket expenses (including bailiff's fees) and applicable taxes.

h. All payments by the Customer shall be made without deduction, discount, suspension, set-off, or compensation.

14. Breach of Contract and Termination

a. MWRE shall be entitled to terminate the Agreement, without judicial intervention, in the event of:

- default by the Customer;
- the Customer filing for, or becoming subject to, bankruptcy or suspension of payments;
- attachment or seizure of the Customer's assets; or
- the discontinuation, transfer, or liquidation of the Customer's business.

b. The provisions of subsection (a) shall be without prejudice to MWRE's right to claim damages.

c. In any of the circumstances referred to in subsection (a), MWRE shall also be entitled to suspend all of its obligations toward the Customer, regardless of the legal basis of those obligations.

15. Governing Law and Competent Court

a. The Agreement between the Parties, these General Terms and Conditions, every offer and quotation, and all disputes arising therefrom shall be governed exclusively by the laws of the **Netherlands**. The **United Nations Convention on Contracts for the International Sale of Goods (CISG)**, concluded in Vienna on 11 April 1980 (Treaty Series 1981, No. 184), shall expressly not apply.

b. The **District Court of Midden-Nederland (Rechtbank Midden-Nederland)** shall have exclusive jurisdiction to hear and determine all disputes arising out of or relating to the Agreement, these General Terms and Conditions, any offer, or any quotation.