

WALKER RUBBER & PLASTICS LTD. - TERMS OF SALE

1. Interpretation

1.1 In these Terms:-

"Buyer"	means the person who accepts the Seller's written quotation for the sale (or sale and installation) of the Goods or whose order for the Goods (or the sale and installation of the Goods) is accepted by the Seller
"Goods"	means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply (or supply and install) in accordance with these Terms
"Seller"	means Walker Rubber & Plastics Limited (company number 000505040)
"Contract"	means the contract for the sale (or the sale and installation) and purchase of the Goods
"Terms"	means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller
"Writing"	and any similar expression includes facsimile transmissions, electronic mail or other forms of electronic communication

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation

1.4 A reference in these Terms to a "person" means a person of any gender and includes an unincorporated firm and any corporate or statutory body

2. Basis of the sale

2.1 The Seller shall sell (or sell and install) and the Buyer shall purchase the Goods in accordance with the Seller's Written quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller) subject in either case to these Terms which shall govern the Contract to the exclusion of any other terms subject to

which any such quotation is accepted or any such order is made or purported to be made by the Buyer

- 2.2 No variation to these Terms shall be binding unless agreed in Writing between an authorised representative of the Buyer and the Seller
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed but nothing in these Terms affects the liability of either party for fraudulent misrepresentation
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed
- 2.5 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller

3. Orders and specifications

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms
- 3.2 The quantity quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller)
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other

person which results from the Seller's use of the Buyer's specification

- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or (where the Goods are to be supplied to the Seller's specification) which do not materially affect their quality or performance
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation

4. Price of the Goods

- 4.1 The price of the Goods (and if relevant their installation) shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order Unless a quotation is previously withdrawn all prices quoted are valid for thirty days (30) only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer
- 4.2 The Seller reserves the right by giving Written notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions
- 4.3 Except as otherwise stated in the Seller's Written quotation or any price list of the Seller and unless otherwise agreed in Writing between the Buyer and the Seller all prices are given by the Seller on a ex-works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport and packaging
- 4.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller

5. Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery (and if relevant installation) of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery (or accept installation) of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery or installation of the Goods
- 5.2 The Buyer shall pay the price of the Goods (without any deduction) by the end of the calendar month immediately following the month in which the date of invoice falls and the Seller shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer The time of payment of the price shall be of the essence of the Contract
- 5.3 If the Buyer fails to make any payment on the due date then without limiting any other right or remedy available to the Seller the Seller may:-
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer under the Contract or any other contract between the parties
 - 5.3.2 appropriate any payment made by the Buyer (whether under this or any other contract between the parties) to such of the Goods (or the goods supplied under any other contract between the parties) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and
 - 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of five (5) per cent per annum above Lloyds TSB Bank Plc base rate from time to time until payment in full is made

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or (if some other place for delivery or installation is expressly agreed in Writing by the Seller) by the Seller delivering the Goods (including delivering them for the purpose of installation) to that place
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused Time

for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer

- 6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated
- 6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without limiting any other right or remedy available to the Seller the Seller may:-
 - 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs of storage
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract

7. Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-
 - 7.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection or
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises at the time of delivery or if the Buyer fails to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods
 - 7.1.3 in the case of Goods to be installed at the Buyer's premises or elsewhere at the time when the installation is substantially complete or if the Buyer

declines installation at the time such installation is tendered by the Seller

- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Terms the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due
- 7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property but the Buyer may resell or use the Goods in the ordinary course of its business
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the seller may at any time require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith enter on any premises of the Buyer or any party where the Goods are stored and repossess the Goods
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable

8. Warranties and liability

- 8.1 Subject to the following provisions the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for reasonable period (depending upon the character and intended use of the Goods) from delivery
- 8.2 The above warranty is given by the Seller subject to the following conditions:-
- 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer
- 8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's instructions (whether oral or in Writing) or misuse of the Goods without the Seller's approval
- 8.2.3 the Seller shall be under no liability under the above warranty (or any

other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment

- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier to the Seller
- 8.3 Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law
- 8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms
- 8.5 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their installation or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven (7) days from the date of delivery (or if later the date of installation) or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after delivery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
- 8.6 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their installation or their failure to meet specification is notified to the Seller in accordance with these Terms the Seller may replace (and/or if relevant reinstall) the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) and (if relevant) the installation costs in which case the Seller shall have no further liability to the Buyer
- 8.7 Except in respect of death or personal injury caused by the Seller's negligence or liability for defective products under the Consumer Protection Act 1987 the Seller shall not be liable to the Buyer by reason of any representations (unless fraudulent) or any implied warranty condition or other term or any duty at

common law or under the express terms of the Contract for loss of profit or for any indirect special or consequential loss or damage costs expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply and (if relevant) installation of the Goods (including any delay in supplying or installing or any failure to supply or install the Goods in accordance with the Contract or at all) or their use or resale by the Buyer and the entire liability of the Seller under or in connection with the Contract shall not exceed 150% of the price of the Goods and (if relevant) their installation except as expressly provided in these Terms

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control Without limiting the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:-

8.8.1 act of God explosion flood tempest fire or accident

8.8.2 war or threat of war sabotage insurrection civil disturbance or requisition

8.8.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any government parliamentary or local authority

8.8.4 import or export regulations or embargoes

8.8.5 strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party)

8.8.6 difficulties in obtaining raw materials labour fuel parts or machinery

8.8.7 power failure or breakdown in machinery

9. Intellectual Property

9.1 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent copyright design trade mark or other industrial or intellectual property rights of any other person then unless the claim arises from the use of a drawing design or specification supplied by the Buyer the Seller shall indemnify the Buyer against all loss damages costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:-

9.1.1 the Seller is given full control of any proceedings or negotiations in

connection with the claim

- 9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations
 - 9.1.3 except pursuant to a final award the Buyer shall not pay or accept the claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld)
 - 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do)
 - 9.1.5 the Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other part in respect of any such claim and
 - 9.1.6 without limiting any duty of the Buyer at common law the Seller may require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss damages costs or expenses for which the Seller is liable to indemnify the Buyer under this clause
- 9.2 (Unless provisions to the contrary are agreed in Writing) where non-proprietary or non-standard Goods are produced or supplied by the Seller pursuant to the Contract there is reserved exclusively to the Seller all industrial or intellectual property rights arising in respect of the Goods to be supplied including (without limitation) any patentable rights copyright and design rights and to the extent any such rights by operation of law vest in whole or part in the Buyer (or any third party under the effective control or direction of the Buyer including its employees) the Buyer will (at its own expense) take (and procure that any relevant third parties take) such steps as may be necessary to vest such rights in the Seller

10. Insolvency of Buyer

- 10.1 This clause 10 applies if:-

10.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company)

enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986) or

10.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer or

10.1.3 the Buyer ceases or threatens to cease to carry on business or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

10.2 If this clause 10 applies then without limiting any other right or remedy available to the Seller the Seller may cancel the Contract or suspend any further deliveries or installation works under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. Installation Services

11.1 Where the Contract provides for the Seller to supply services for the installation of the Goods then the following provisions of this clause 11 will apply

11.2 Unless arrangements to the contrary are agreed in Writing the Seller will provide any necessary access equipment

11.3 It is the responsibility of the Buyer to ensure that the Seller's operatives have a safe working area for the installation of the Goods free from moving vehicles and any other hazards and in the event that such a safe working area is not or ceases to be provided then the Seller may in its absolute discretion suspend all installation works and the Buyer will indemnify the Seller against all additional costs and expenses incurred by the Seller as a result of such suspension of the installation works

11.4 When a date or dates have been agreed with the Seller for the installation of the Goods and the buyer cancels that installation date on less than 48 hours notice then the Buyer will indemnify the Seller against all additional costs and expenses incurred by the Seller as a result of such cancellation

11.5 Subject to the following provisions of this clause 11 the Seller warrants that the

Goods will be installed using reasonable skill and care

11.6 The warranty in clause 11.5 is given subject to the:

11.6.1 conditions set out in sub clauses 8.2.2 and 8.2.3 applied mutatis mutandis

11.6.2 condition that the Seller shall be under no liability in respect of any defect in the installation of the Goods arising from any drawing design or specification supplied by the Buyer

12. General

12.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision

12.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected

12.4 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts