

Dexine Rubber Technologies Limited
Conditions for the Sale of Goods

- 1 **Interpretation**
- 1.1 In these Conditions the following definitions apply:
- Business Day** means a day other than Saturday, Sunday and public holidays when banks generally are open for non-automated business in London;
- Buyer** means the person or firm who purchases Goods from the Seller identified and whose details are set out in the Order;
- Collection Location** means the address for collection of the Goods by the Buyer as set out in the Order;
- Conditions** means the terms and conditions set out in this document;
- Confidential Information** means any commercial, financial or technical information, information relating to products, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to this Contract;
- Contract** means the agreement between the Seller and the Buyer for the sale and purchase of Goods incorporating these Conditions;
- Delivery Location** means the address for delivery of the Goods as set out in the Order;
- Force Majeure** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including (but not limited to) an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest, strike, lockout or boycott or other industrial action; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required by for performance of the Contract, except the Buyer's failure to pay any amount under this Contract shall not be an event of Force Majeure in any event;
- Goods** means the goods and any related deliverables to be supplied by the Seller to the Buyer;
- Intellectual Property Rights** means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, chip topography rights, mask works, utility models, domain names and all similar;
- Order** means the Buyer's order for the Goods from the Seller as set out in the Buyer's written acceptance of the Seller's quotation for the supply of Goods, or if such acceptance is provided to the Seller verbally, as set out in the Seller's written confirmation of such order;
- Seller** means Dexine Rubber Technologies Limited, a company registered in England and Wales with number 8591847 whose registered office is at Chelsea Works, St Michael's Road, Kettering, Northants NN15 6AU; and
- VAT** means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.
- 1.2 Unless the context otherwise requires:
- 1.2.1 each gender includes the others;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 references to the Contract include the Conditions and the Order;
- 1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
- 1.2.5 clause headings do not affect their interpretation;
- 1.2.6 general words are not limited by example; and
- 1.2.7 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 2 **Application of these Conditions**
- 2.1 These Conditions apply and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 2.3 No variation of these Conditions or to an Order, or to a quotation from the Seller will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.
- 2.4 Each Order by the Buyer to the Seller will be deemed to be an offer to purchase Goods subject to the Conditions.
- 2.5 The Seller reserves the right at all times to reject any Order, in whole or in part, at its sole discretion. In particular, the Seller may request trade references and/or a payment on account before accepting an Order, and/or set a credit limit applicable to the Buyer from time to time.
- 2.6 Any quotation by the Seller for the provision of Goods will be:
- 2.6.1 deemed to be an invitation to treat (and shall not be an offer) by the Seller to supply Goods on and subject to the Conditions;
- 2.6.2 valid for 30 days only from the date of issue; and
- 2.6.3 priced according to the quantity of Goods stated therein. The price per unit stated in any quote shall not be valid for an order of a smaller quantity.
- 2.7 A Contract will be formed upon acceptance by the Seller of the Buyer's Order.
- 3 **Price**
- 3.1 The price for the Goods will be as set out in the Order or in default of such provisions will be calculated in accordance with the Seller's standard scale of charges in force at the date of the formation of the Contract.
- 3.2 The price for the Goods does not include:
- 3.2.1 carriage and packaging for the Goods, which will be charged in addition at cost; and
- 3.2.2 VAT, which will be charged in addition at the then applicable rate.
- 4 **Payment**
- 4.1 The Seller shall issue its invoice for the Goods upon or following delivery of the Goods.
- 4.2 The Buyer will pay all invoices:
- 4.2.1 in full, without deduction or set-off other than as required by law, in cleared funds by the 30th day following the date of invoice; and
- 4.2.2 by cheque or BACS or any other method specified on the invoice.
- 4.3 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date the Seller may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Bank of England from time to time in force. Interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.4 Any payment on account made by the Buyer in advance of the Goods being delivered to the Buyer shall be treated as a prepayment and shall be applied in payment (in whole or part) of any invoice raised by the Seller.
- 4.5 If the Buyer returns (by fully paid delivery) to the Seller all packaging used to deliver the Goods, in good condition, within one month of such delivery and with the Buyer's name and address attached, the cost of such packaging as appears on the Seller's invoice, shall be credited.
- 5 **Delivery**
- 5.1 The Goods will be:
- 5.1.1 delivered by or for the Seller to the Delivery Location on the date(s) specified in the Order; or
- 5.1.2 made available for collection by the Buyer at the Collection Location. The Buyer will collect the Goods within 5 Business Days of the Seller notifying the Buyer that the Goods are available for collection.
- 5.2 The Goods will be deemed delivered:
- 5.2.1 if delivered by or for the Seller under clause 5.1.1, on completion of unloading of the Goods at the Delivery Location;
- 5.2.2 if collected by the Buyer under clause 5.1.2, on completion of loading at the Collection Location.
- 5.3 The Goods may be delivered by instalments. Any delay in delivery or defect in an instalment will not entitle the Buyer to cancel any other instalment.
- 5.4 Delivery of the Goods, or part thereof, will be accompanied by a delivery note stating the relevant Buyer and Seller details and the product numbers and type and quantity of Goods in the consignment.
- 5.5 The Seller will use its reasonable endeavours to meet delivery dates but such dates are approximate only, and time of delivery is not of the essence.
- 5.6 The Seller will not be liable for any delay in or failure of delivery caused by:
- 5.6.1 the Buyer's failure to: (i) make the Delivery Location available, (ii) prepare the Delivery Location in accordance with the Seller's instructions or as required for delivery or (iii) provide the Seller with adequate instructions, for delivery or otherwise relating to the Goods;
- 5.6.2 the Buyer's failure to collect the Goods from the Collection Location; or
- 5.6.3 an event of Force Majeure.
- 5.7 If the Buyer fails to accept delivery of the Goods as provided in clause 5.1.1 on the date set out in the Order, or collect the Goods within the period specified in clause 5.1.2:
- 5.7.1 delivery of the Goods will be deemed to have occurred at 09:00 a.m. on the 5th Business Day following such date or the last day of such period; and
- 5.7.2 the Seller will store and insure the Goods pending delivery, and the Buyer will pay storage and insurance charges at the Seller's then-applicable rate and any other costs and expenses incurred by the Seller in doing so.

- 5.8 If 20 Business Days following the due date for delivery or the last day of the period for collection of the Goods, the Buyer has not taken delivery of or collected them, the Seller may resell or otherwise dispose of the Goods. The Seller will:
- 5.8.1 deduct storage charges at the Seller's then-applicable rate and reasonable costs of resale; and
- 5.8.2 account to the Buyer for any excess of the resale price over, or invoice the Buyer for any shortfall of the resale price below, the price paid by the Buyer for the Goods.
- 6 Title and risk**
- 6.1 Risk in the Goods will pass to the Buyer on completion of delivery under clause 5.1.
- 6.2 Title to the Goods will pass to the Buyer once the Seller has received payment in full for the Goods and any other amounts owed by the Buyer to the Seller.
- 6.3 Until title to the Goods has passed to the Buyer, the Buyer will:
- 6.3.1 hold the Goods as bailee for the Seller;
- 6.3.2 store the Goods separately from all other material in the Buyer's possession;
- 6.3.3 take all reasonable care of the Goods and keep them in reasonable condition;
- 6.3.4 insure the Goods: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the price (v) noting the Seller's interest on the policy;
- 6.3.5 ensure that the Goods are clearly identifiable as belonging to the Seller;
- 6.3.6 not remove or alter any mark on the Goods;
- 6.3.7 inform the Seller as soon as possible if it becomes subject to any of the events set out in clause 13.1; and
- 6.3.8 provide the Seller such information concerning the Goods as the Seller may request from time to time.
- 6.4 Notwithstanding clause 6.3, the Buyer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clause 13.1 is or is likely to occur.
- 6.5 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in clause 13.1, the Seller may:
- 6.5.1 require the Buyer at the Buyer's expense to re-deliver the Goods to the Seller; and
- 6.5.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.
- 7 Warranty**
- 7.1 The Seller warrants that, for a period of 6 months from delivery (the **Warranty Period**), the Goods will:
- 7.1.1 conform in all material respects to their description; and
- 7.1.2 be free from material defects in design, material and workmanship.
- 7.2 The Seller will, at its option, repair, replace or refund the price of defective Goods, provided that and subject to clause 7:
- 7.2.1 the Buyer informs the Seller in writing during the Warranty Period and promptly on discovery that some or all of the Goods do not comply with clause 7.1;
- 7.2.2 the Buyer gives the Seller a reasonable opportunity to examine the defective Goods; and
- 7.2.3 the Buyer returns the defective Goods to the Seller at the Buyer's expense.
- 7.3 The Conditions will apply to any Goods repaired or replaced under clause 7.2.
- 7.4 The Seller will not be liable for any failure of the Goods to comply with clause 7.1:
- 7.4.1 where such failure arises by reason of fair wear and tear, wilful damage, negligence, abnormal working conditions, or could be expected to arise in the normal course of use of the Goods;
- 7.4.2 to the extent caused by the Buyer's failure to comply with the Seller's instructions as to: (i) storage, installation, commissioning, use or maintenance of the Goods, or (ii) good practice in relation to the storage, installation, commissioning, use or maintenance of the Goods;
- 7.4.3 where the Buyer repairs or alters any Goods without the Seller's prior written agreement; or
- 7.4.4 where the Buyer uses any of the Goods after notifying the Seller that it does not comply with clause 7.1.
- 7.5 Except as set out in this clause 7: (a) the Seller gives no warranty in relation to the Goods; and (b) will be under no liability for their failure to comply with the warranty in clause 7.1. In particular, the conditions implied by ss13-15 of the Sale of Goods Act 1979 are expressly excluded.
- 8 Obligations of the Buyer**
- The Buyer will place all Orders on these Conditions and ensure that the contents of any Order are complete and accurate, and co-operate fully with the Seller in relation to delivery or collection of the Goods.
- 9 Liability – THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 9.1 Subject at all times to clauses 9.2 and 9.3, whether or not the Seller has been advised of the possibility of such a loss and whether or not such a loss was reasonably foreseeable, the Seller shall not be liable in contract, tort or otherwise howsoever for any claim (including without limitation a claim pursuant to an indemnity), damage, loss or costs in respect of:
- 9.1.1 any direct loss of profit;
- 9.1.2 any direct loss of anticipated savings; or
- 9.1.3 any indirect loss or damage howsoever caused including (without limitation):
- 9.1.3.1 any indirect loss of profit;
- 9.1.3.2 loss of anticipated profit including loss of profit on contracts, loss of business or loss of opportunity;
- 9.1.3.3 loss of the use of money;
- 9.1.3.4 indirect loss of anticipated savings;
- 9.1.3.5 loss of goodwill or reputation; and/or
- 9.1.3.6 loss of data,
- and the parties hereto agree that the sub clauses of this clause 9.1 shall be severable.
- 9.2 The Buyer acknowledges that the price for the Goods is based on the assumption that the liability of the Seller and the Buyer is as set out in these Conditions. The Buyer is advised to insure against any risk not accepted by the Seller. Thus, subject at all times to clause 9.3, the Seller's total liability in connection with this Agreement whether in contract, tort, or otherwise will not exceed an amount equal to two times the purchase price of the Goods.
- 9.3 Notwithstanding anything to the contrary in these Conditions, the Seller's liability:
- 9.3.1 for death or personal injury caused by the negligence of the Seller;
- 9.3.2 due to any breach by the Seller of conditions as to title or warranty as to quiet possession;
- 9.3.3 for fraud (including without limitation fraudulent misrepresentation);
- 9.3.4 for defective products under the Consumer Protection Act 1987; or
- 9.3.5 for any other matter to the extent that it would be unlawful to exclude or limit liability therefor,
- shall not be limited (but nothing in this clause confers any right or remedy upon the Buyer to which it would not otherwise be entitled).
- 10 Intellectual Property Rights**
- The Buyer will indemnify the Seller against all reasonable costs and expenses incurred by the Seller in connection with any claim for infringement of a third party's Intellectual Property Rights arising from the modification or use of the Goods other than in accordance with these Conditions.
- 11 Confidentiality**
- Each party shall keep confidential all Confidential Information of the other party and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to (a) any information which was in the public domain at the date of this Contract; (b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement; (c) any information which is independently developed by the other party without using information supplied by the first party; or (d) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12 Force Majeure**
- A party will not be liable if delayed in or prevented from performing its obligations (other than obligation to pay an amount due under the Contract) due to Force Majeure, provided that it promptly notifies the other of the Force Majeure event and its expected duration and uses reasonable endeavours to minimise the effects of that event.
- 13 Termination**
- 13.1 The Contract may be terminated forthwith at any time by the Seller on written notice to the Buyer if:
- 13.1.1 the Buyer commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or if capable of remedy is not remedied within 14 days of written notice to do so;
- 13.1.2 the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due;
- 13.1.3 the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction or (c) makes an application to court for protection from its creditors generally;
- 13.1.4 the Buyer passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the Buyer, or a winding-up order is made in relation to the Buyer, other than solely in relation to a solvent amalgamation or reconstruction;

- 13.1.5 a receiver or administrative receiver may be or is appointed in relation to the Buyer or any of its assets;
 - 13.1.6 any creditor of the Buyer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Buyer's assets, and such attachment or process is not discharged within 14 days;
 - 13.1.7 the Buyer takes or suffers any action similar to any of the above in any jurisdiction;
 - 13.1.8 there is a material change in the management, ownership or control of the Buyer;
 - 13.1.9 the Buyer suspends trading, ceases to carry on business, or threatens to do either; or
 - 13.1.10 the Buyer, (being an individual) dies or ceases to be capable of managing his own affairs.
- 13.2 In addition to its rights under clause 13.1 the Seller may terminate this Contract at any time by giving 14 days' written notice to the Buyer if the Buyer has failed to pay any amount due under the Contract on the due date.
- 13.3 On termination of the Contract for any reason:
- 13.3.1 the Buyer will within 5 Business Days pay all invoices of the Seller then outstanding and not disputed in good faith;
 - 13.3.2 the Seller will, within 20 Business Days, invoice the Buyer for all Goods delivered or provided but not yet invoiced and the Buyer will pay such invoice within a further 10 Business Days (unless the invoice is disputed in good faith);
 - 13.3.3 Buyer will within 5 Business Days return any materials of the Seller then in its possession or control; if it fails to do so, the Seller may enter onto any premises owned by or under the control of the and take possession of them;
 - 13.3.4 the accrued rights and liabilities of the parties will not be affected; and
 - 13.3.5 any clause which expressly or by implication are to survive termination will do so.
- 14 **General**
- 14.1 Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions, the Order or otherwise in the Contract.
- 14.2 All payments by the Buyer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.
- 14.3 The parties are independent businesses and not principal and agent, partners, or employer and employee.
- 14.4 If any part of the Contract is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Contract and the remaining provisions of the Contract will otherwise remain in full force.
- 14.5 Notices under the Contract will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:
- 14.5.1 by first-class post: two Business Days after posting;
 - 14.5.2 by airmail: seven Business Days after posting;
 - 14.5.3 by hand: on delivery;
 - 14.5.4 by facsimile: on receipt of a successful transmission report from the correct number; and
 - 14.5.5 by e-mail: two Business Days after sending provided that no delivery failure notification is received.
- 14.6 No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 14.7 This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 14.8 In the event of conflict, the terms of these Conditions prevail over those of the Order.
- 14.9 The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.
- 14.10 The Contract will bind and benefit each party's successors and personal representatives.
- 14.11 The Contract will be governed by the law of England and Wales. Disputes will be submitted to the exclusive jurisdiction of the courts of England and Wales.