

Buckeye Rubber & Packing Terms and Condition of Sale

1. These Terms and Conditions of Sale, together with any terms and conditions contained in any sales quotation, order acknowledgment, invoice or packing list (collectively referred to herein as the "Agreement") provided by Buckeye Rubber & Packing Co. (the "Seller") to the customer listed on the order (the "Purchaser") constitute the entire agreement between the Seller and Purchaser for the purchase of the goods sold hereunder. The issuance of an order by Purchaser shall be deemed an acceptance by Purchaser of the terms and conditions set forth herein. Any different, additional or conflicting terms or conditions of any purchase order, specifications or other document issued by Purchaser are expressly objected to by the Seller and shall be deemed rejected by Seller and shall not be binding upon the Seller.
2. Prices do not include any applicable sales, use, excise or other tax. In the case of any such tax Seller may add the tax to the invoice or may at its option require Purchaser to pay such tax directly to the taxing authority. Seller reserves the right to correct prices on any orders having typographical or mathematical errors.
3. Terms of payment are subject at all times to approval of Seller's credit department. If Seller incurs expenses in order to collect amounts owed it by Purchaser, such expenses, including a reasonable allowance for attorney fees, shall be added to and become part of the contract price due Seller from Purchaser.
4. Delivery dates are estimates only and are subject to delays due to conditions beyond Seller's reasonable control. Time shall not be deemed to be of the essence in making delivery under this Agreement unless specifically agreed to in writing and signed by the President or a Vice-President of Seller. Seller is not liable for claims for damages due to failure, for any reason, to meet such scheduled delivery dates, and such failure to meet scheduled delivery dates shall not be sufficient cause for cancellation of Purchaser's obligations under this Agreement.
5. Seller shall not be liable for any failure to deliver or for any delay in delivering goods caused by accidents, delays in transportation, fires, explosions, floods, earthquakes or other acts of nature, riots, strikes, differences with workmen, labor shortages, inability to obtain materials or supplies, government interference or regulations or impossibility of performance or any other circumstances beyond Seller's reasonable control.
6. Materials are sold F.O.B. shipping point and title shall pass to Purchaser upon delivery to the carrier. Seller is not responsible for goods lost or damaged in transit and any claim shall be made by Purchaser to the carrier in accordance with the carrier's requirements.
7. No goods which Purchaser repairs, alters or modifies in any respect may be rejected or returned without the written consent of Seller.
8. Orders are not subject to cancellation except with Seller's consent, and Seller reserves the right, in addition to any other remedies, to require payment in full for all costs incurred by Seller in connection with the uncompleted portion of any order, including direct or indirect costs, selling and overhead costs, and any cancellation charges incurred by Seller, plus ten percent of the contract price.
9. Seller warrants only that, at the time of shipping, the goods sold by Seller to Purchaser shall conform to applicable drawings and specifications and shall be free from defect in material and workmanship. All goods sold by Seller are not guaranteed for any specific time period, for any measure of service or for

Buckeye Rubber & Packing Terms and Condition of Sale

any specific purpose, notwithstanding any disclosure Purchaser may have made to Seller about Purchaser's intended use. Seller makes no additional warranty with respect to goods sold by Seller, but Seller shall use commercially reasonable efforts to obtain for Purchaser the benefits of any other warranty on such goods offered by Seller's supplier. Purchaser must notify Seller of any claim for breach of the limited warranties provided herein within one hundred and eighty (180) days of the date of shipment of the goods. If Purchaser does not provide such timely notification, Seller shall be entitled to reject Purchaser's claim for breach of this limited warranty and Seller shall have no liability for such breach. This limited warranty shall only be effective if Seller has had a reasonable opportunity to investigate the alleged breach. If Seller determines, upon examination that the goods or any part of it alleged to be defective are not defective or were not defective at the time of shipping, Purchaser shall be entitled to no remedy under this limited warranty. Purchaser may return goods to Seller's facility only if an authorization, including written shipping instructions, has been received from Seller. If such goods are not shipped in accordance with such shipping instructions, then Purchaser shall be entitled to no remedy under this limited warranty. Any repairs, modifications or alterations made to the goods without the authorization of Seller will void this limited warranty. This limited warranty will not apply where damages are caused by misuse, abuse, neglect, faulty installation or improper application or use of the goods. THE ABOVE EXPRESS WARRANTIES ARE GIVEN IN LIEU OF AND IN EXCLUSION OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING LANGUAGE, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

10. If any of the goods that are sold by Seller prove to Seller's satisfaction to be defective at the time of shipment in any respect, whether the defect or defects be latent or patent, Purchaser's sole remedy and Seller's sole liability shall be to return the goods for replacement or refund, at Seller's option; provided that if the manufacturer of such goods offers any further remedy for such breach of warranty, Seller will use commercially reasonable efforts to obtain the benefits of such remedy for Purchaser's benefit.

11. In no event shall Seller be liable for any special, indirect, incidental or consequential damages, including without limitation, damages in the character of loss of profits or revenues, however caused, and whether in contract, tort or under any other theory of liability. In no event shall Seller's aggregate liability arising out of or related to this Agreement, whether in contract, tort or under any other theory of liability, exceed the purchase price of the goods giving rise to the claim.

12. All technical advice, recommendations and services rendered by Seller are gratis, are based on technical data which Seller believes to be reliable, and are for use only by persons having adequate skill and know-how. Seller shall not be responsible for results obtained or for any damage resulting from their use.

13. Unless the goods sold hereunder fail to meet the express warranties set forth in Section 9 above, Purchaser shall indemnify, defend and hold Seller harmless from all claims, demands, actions, cause of action, suits, judgments, settlements, costs, expenses, fees, penalties, damages or other loss, including costs of investigation, litigation and reasonable attorney's fees, arising out of Purchaser's selection, use, maintenance, alteration, design, sale and further processing of the goods sold hereunder.

14. Should any clause or provision of this Agreement be held unenforceable or unlawful, the clause or provision in question shall be modified so as to eliminate the unenforceable element and as so modified shall be binding upon the parties hereto. The remaining clauses and provisions of this Agreement shall not be affected thereby.

Buckeye Rubber & Packing Terms and Condition of Sale

15. This Agreement may not be modified except in writing signed by both parties. No salesman, agent, or other representative or Seller has power to add to, waive, or amend this Agreement unless first authorized in writing by the President or a Vice-President of Seller.

16. This Agreement shall be construed in accordance with the laws of the State of Ohio (without reference to conflict of law provisions). Seller and Purchaser hereby consent to the jurisdiction and venue of federal and state courts located in Cuyahoga County, Ohio for the determination of all disputes arising under this Agreement.

17. Waiver by Seller of any breach shall not thereafter be deemed a waiver of a subsequent breach of the same or any other clause or provision hereof.

18. Seller certifies that the goods produced hereunder were produced in compliance with the Fair Labor Standards Act and the regulations and orders issued thereunder.

19. Seller shall have the right to invoice Purchaser for, and Purchaser shall reimburse Seller for, any costs incurred by Seller resulting from product obsolescence costs incurred by Seller resulting from product obsolescence relating to goods sold or held for sale to Purchaser, including costs of product produced or purchased to meet Purchaser's orders or forecasts but then not released by Purchaser, and any related disposal charges for such products.

20. In the event that Seller is required to purchase or supply any customer-specific tooling, molds or equipment necessary for the production of the goods purchased by Purchaser, Seller shall have the right to charge Purchaser a non-recurring preparation/purchase charge for such tooling, molds or equipment. Seller shall be responsible for maintaining, repairing and replacing such tooling, molds or equipment as necessary, during its quoted/expected usable life. In consideration of Seller's undertaking of such maintenance, repair and/or replacement obligations, Seller shall retain title to all such tooling, molds or equipment and any intellectual property rights embodied therein (other than customer-specific design information furnished by Purchaser). Seller shall maintain, repair and replace any tooling, molds or equipment as specified above, during the normal quoted/expected life of such tooling, molds or equipment. After the quoted/expected life of such tooling, molds or equipment has been exceeded, Purchaser shall be responsible for all costs incurred by Seller to maintain, repair and/or replace such tooling, molds or equipment.

21. Overages and Underages: Seller may, its own discretion, ship up to ten percent (10%) more than the quantity ordered or up to ten percent (10%) less than the quantity ordered as a result of production lots that may be in excess of or less than the quantity ordered, provided, however, that the value of any such overage or underage is less than \$100.

22. It is recognized that many of Seller's products are very small parts which are shipped in large quantities. As a result, only larger items are counted by hand, and all other products are shipped and billed by weight. In light of the foregoing, Seller's invoice quantity shall be treated as accurate if the quantity shipped to Purchaser is within +/- two percent (2%) of the invoice quantity. Claims for shortages or overages must be communicated to Seller within ten (10) days of receipt of the shipment of goods by Purchaser.