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| RUBBERATKINS LTD TERMS AND CONDITIONS OF SALE | | | | | |
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RUBBERATKINS LIMITED TERMS AND CONDITIONS OF SALE

DEFINITIONS: **The Company** means Rubberatkins Limited (Company No. SC109744), having its Registered Office at Claymore Avenue, Aberdeen Science & Energy Park, Bridge of Don, Aberdeen, AB23 8GW or (where applicable) its subsidiary and associated companies and its successors and assignees, whomsoever.

**The Buyer** means the person, firm, company, corporation, or public authority placing an order with the Company to purchase the Goods.

**The Goods** shall mean all classes of products produced by the Company and supplied hereunder together with all constituent parts, replacements, and renewals thereof and all extras, additions, spare parts, and accessories forming part thereof or used in connection there with and including services whether ancillary to such products or otherwise, all as included in the Contract.

**The Contract** shall mean the agreement between the Company and the Buyer constituted in accordance with the provisions of clause 2 hereof, incorporating these terms and conditions.

1. FORMATION OF CONTRACT:

Any quotation submitted by the Company is an invitation to treat and not an offer. The placing of any order by the Buyer orally or in writing and whether a quotation has been submitted shall constitute as an offer by the Buyer and the Contract shall be affected when such an offer is accepted orally or in writing by the Company. The Company will only accept such and offer in accordance with these terms and conditions. No terms and conditions put forward by the Buyer, shall be incorporated into the Contract and these terms and conditions shall form the whole terms and conditions of the Contract unless otherwise specifically agreed by the Company in writing.

1. CONFIDENTIALITY AND INTELLECTUAL PROPERTY:
   1. The Buyer will treat and maintain all of the Company’s confidential information which may come into its possession during the course of or in connection with the Contract strictly secret and confidential, shall not disclose such confidential information directly or indirectly to any person, firm, company, corporation or public authority without the Company’s express written consent and shall not use such confidential information or allow such confidential information to be used otherwise than for the purpose of the Contract. The Buyer shall furthermore enter into the Company’s standard Confidentiality Agreement if so, required by the Company, for the purpose of the Contract. The Buyer shall furthermore enter into the Company’s standard Confidentiality Agreement if so, required by the Company.
   2. The Buyer acknowledges and confirms that all Intellectual Property Rights (including, without limitation, patent rights, trade, or service mark rights, registered or unregistered design rights and copyright) used or arising during, in connection with or incidental to the Contract shall be solely beneficially and legally owned by the Company.
   3. All new & modified standard product designs (for example Hercules elements, Cups etc) created by the Company, including those designs where customers have contributed financially to their development and/or testing and/or FEA, will remain the sole property of the Company. The Company retains the rights to sell, market and further develop all Company designed products except where exclusivity has been agreed to and/or purchased. This does not apply for products created to Customer owned manufacture drawings. Note: Any mould tooling, test reports, test data, or proprietary data provided by or paid for by the customer remain the property of the customer and will not be shared, distributed, or utilised in any way without the prior consent of the customer.
2. PROVISION OF INFORMATION:

The Buyer shall (free of charge) promptly make available to the Company and allow the Company to have complete and prompt access to all technical and other information which the Company may require to assist it in performing its obligations under the Contract and the Company shall be under no obligation to proceed with any order until all information which is required has been received.

1. DELIVERY, RISK AND TRANSFER OF TITLE:
   1. Where delivery of the Goods is to be made by instalments, the sale and purchase of each instalment shall be deemed to be a separate and distinct Contract and no default by the Company in respect of any instalment shall entitle the Buyer to reject or withhold payment in respect of any other instalment. Any date or time named by the Company for delivery is given and intended as an estimate only and the Company shall not be liable to make good any damage or loss whether arising directly or indirectly, out of delay in delivery. Delivery shall be deemed to take place when the Goods are despatched from the Company’s premises, whether uplifted by a carrier, collected by the Buyer directly or delivered to the Buyer at the Buyer’s place of business or to another location specified by the Buyer.
   2. Risk of loss or damage to the Goods will pass to the Buyer, provided that notwithstanding the passing of risk in the Goods, property and title in the Goods shall remain vested in the Company and will only pass to the Buyer when the Company has received in cash or in cleared funds payment in full of the price of the Goods and of all other sums due by the Buyer to the Company.
   3. Where property and title in the Goods does not pass by reason of sub-clause 5.2 above, the Company shall be entitled to enter upon the Buyer’s premises to remove the Goods, whether they are in situ or installed, and the Buyer shall co-operate fully with the Company for these purposes. The Company shall not be liable for any damage to the Buyer’s premises which is reasonably necessary to remove the Goods nor for loss of any kind to the Buyer consequent upon such removal or damage.
2. STORAGE:

Delivery shall be taken by the Buyer within the period (if any) stated in the Contract. If for any reason the Buyer is unable to accept delivery of the Goods at the time when they are due and ready for delivery, the Company shall, if its storage facilities permit but at the risk of the Buyer, store the Goods and take all reasonable steps to prevent their deterioration until actual delivery and the Buyer shall be liable to the Company for the reasonable cost (including insurance) of its so doing.

1. STORAGE OF MOULD TOOLS:

In relation to purchases of Mould Tools which are to be stored at the Company’s or Sub Contractor’s premises, the Buyer acknowledges and accepts that all such Mould Tools are stored at the risk of the Buyer and that it is the Buyer’s duty to ensure such Mould Tools are adequately insured.

1. SETTLEMENT TERMS:
   1. It is an essential condition of sale that the Buyer shall pay for the Goods at the price stated on the invoice issued by the Company plus value added tax (VAT) (as applicable) within thirty days of the date of the Company’s invoice.
   2. If the Buyer does not make payment to the Company upon the day when payment is due, the Company shall be entitled to charge interest from the date due until payment is made at the rate of three per cent (3%) per annum above the base lending rate from time to time of Lloyds Banking Group plc.
2. PRICES:

Unless otherwise agreed in writing all orders are executed subject to prices ruling at the date of despatch and any price list of the Company whether published or not shall not affect the right of the Company to charge for the goods in accordance with this clause. The Company shall not be bound by any clerical or arithmetical errors in any price list, invoice, statement, quotation, or other documentation whatsoever. Such prices ruling are exclusive of VAT and delivery charge unless specifically otherwise as agreed in writing.

1. ORDERS/ EXTRA COSTS:

If any extra cost is incurred by reason of: -

9.1 order duplication resulting from the Buyer’s failure to separately and clearly identify orders sent in confirmation of telephone instructions.

9.2 any additional instructions or any errors or omissions in instructions submitted by the Buyer to the Company.

9.3 any failure or delay on the part of the Buyer to provide any information and/or assistance required by the Company.

9.4 any special testing of any Goods agreed by the Company; or

9.5 any variation in the specification of design or any other modifications to the Goods, then the Buyer shall bear all such extra cost(s).

1. DISPUTES AND SETOFF:

Any liabilities upon the Company are subject to the terms of payment and all other obligations upon the Buyer being strictly observed. The Buyer shall not be entitled to withhold payment of any amount payable to the Company under the Contract because of any disputed claim against the Company.

1. TERMINATION AND SUSPENSION:

The Company shall, without prejudice to any of its other rights and remedies, be entitled to terminate or suspend the Contract wholly or in part in any of the following events or defaults: -

11.1 if any sum owing from the Buyer to the Company for any reason whatsoever is unpaid after the due date for payment.

11.2 if the Buyer refuses to take delivery of any part of the Goods.

11.3 if the Company has any reason to doubt the credit worthiness of the Buyer.

11.4 if the Buyer commits any act of insolvency, including without prejudice, becoming apparently or insolvent or going into liquidation, receivership, administration, or sequestration; or

11.5 if the Buyer commits any breach of the contract.

The Company shall be entitled to exercise its rights of termination or suspension at any time during which the event of default giving rise thereto has not ceased or been remedied in full.

1. DESIGN AND SPECIFICATION:

The Buyer’s attention is drawn to the fact that the design, specification, materials and construction of the Goods may alter at any time without prior notice and the Company reserves the right to supply the Goods so altered in performance of any Contract provided that the Goods shall be of the same general type as the Goods ordered or fit for any purpose which the Buyer shall have made known to the Company.

1. PERFORMANCE:

In cases where the Company is asked to recommend Goods to meet the Buyer’s needs, the Buyer’s attention is drawn to the fact that it is not practicable for the Company to predict with complete accuracy in advance the Goods which will be needed to satisfy the Buyer’s requirements and the Company therefore accepts no responsibility for the loss or expenses incurred by the Buyer as a consequence of such a recommendation.

1. LOSS OR DAMAGE IN TRANSIT:

Any claim alleging defective packing or shortage in quantity must be notified to the Company in writing within three days from the date of delivery. The Company will not be liable for damage, loss or delay to the Goods during transit however caused and all claims by the Buyer regarding such damage, loss or delay should be made immediately to the carriers concerned.

1. DEFECTS:

15.1 The Company warrants to the Buyer that, subject to sub-clauses 16.2 to 16.5, the Goods will be free from defects. Save as aforesaid, the Company makes no warranties for any particular purpose with respect to the Goods and insofar as it is competent to do so the Company expressly disclaims any warranties express or implied (including the implied warranty of merchantable quality and implied warranty of fitness for a particular purpose) in respect thereof, and all obligations or liabilities on the part of the Company for damages, including but not limited to, incidental or consequential damages arising out of or in connection with the Goods are (save as aforesaid) hereby expressly excluded. The Buyer accepts the foregoing disclaimer and exclusion in respect thereof to be fair and reasonable in all the circumstances.

15.2 The Company will at its option reimburse the price of or repair or replace any Goods established to be defective to the satisfaction of the Company but that provided that such defect(s) is/are due solely to the negligence of the Company or its employees or agents whether in the production, installation, modification, or testing of the Goods or otherwise and not to any negligence, breach of contract or other default of any third party, including the manufacturers and/or suppliers to the Company of materials and products comprised in or forming part of the Goods and that provided also that the Company is given written notice of any such defect within 14 days of delivery to the Buyer.

15.3 If requested by the Company, the Buyer must at its own expense promptly return to the Company all Goods which are the subject of a claim by the Buyer under sub-clause 16.1. The Buyer will permit the Company to make such inspections and examinations as it thinks fit for the purpose of establishing whether any Goods supplied by the Company are defective.

15.4 The Buyer must ensure that the Goods are serviced, stored, maintained, and used properly.

15.5 No attempt must be made by the Buyer or any third party to remedy any defect or to dismantle or otherwise tamper in any way with any of the Goods except in accordance with specific instructions, directions and/or requests of the Company.

1. EXCLUSION OF LIABILITY:

16.1 The Company’s liability in respect of defective Goods is limited to performing its obligations under clause 16 hereof and is subject to the Buyer ensuring that all its obligations under clause 16 are complied with in full. Apart from such obligations, or if such provisions are not complied with in full, neither the Company nor its employees or agents shall be under any liability to the Buyer or any third party for any injury, loss, or damage of any kind whether direct or consequential and howsoever caused resulting from or arising out of or incidental to: -

16.1.1 any negligence on the part of the Company or its employees (except insofar as the same causes death or personal injury); or

16.1.2 the Company’s performance of or failure to perform or breach of any of its express or implied obligations under any Contract; or

16.1.3 any defects in the Goods; or

16.1.4 any advice given, or representation made by the Company or on its behalf in relation to the subject matter of the Contract.

16.2 The rights conferred upon the Buyer in clause 16 hereof are given in place of all conditions, warranties, representations, statements, liabilities and other terms whatsoever implied by common law, statute, trade usage or otherwise, all of which shall accordingly be excluded in so far as it is competent to do so and the Company shall have no obligation to the Buyer either in delict or under any Contract other than the express obligations contained in the terms and conditions.

16.3 Where the Buyer deals as a consumer as defined in Section 12 of the Unfair Contract Terms Act 1977 nothing contained in the clauses shall be deemed to exclude or restrict any liabilities of the Company which the Company is prevented from excluding or restricting by virtue of any statute.

16.4 In the event that, notwithstanding the foregoing exclusion of liability, the Company is found liable to the Buyer then the Company’s entire liability, in such event, shall not exceed the price of the Contract.

1. THIRD PARTY CLAIMS:

The Buyer shall indemnify the Company against all or any costs, claims, demands, expenses and liabilities incurred by virtue of any claim by any third party (including employees of the Buyer) arising directly or indirectly for the performance or non-performance or breach by either party of the Contract or from any claim that any Goods supplied by the Company infringe any letters patent, registered design, copyright, trademark or service mark or other industrial property right of any third party.

1. FORCE MAJEURE:

The Company accepts no liability for delay or non-fulfilment of any terms of the Contract caused by events beyond the control of the parties which cannot be foreseen or if foreseeable are unavoidable, including, without limitation, any action or delay of any third-party supplier of the Company, war, strikes, lockouts, accident, fire, scarcity of materials or any other cause or causes not directly within the Company’s control.

1. WAIVER:

No failure or delay on the part of the Company to exercise its rights under the Contract shall operate as a waiver thereof nor shall any single or partial exercise or any such right exclude any other or further exercise thereof. Any waiver of a breach of any provision of the Contract shall not affect the Company’s rights in the event of any further or additional breach or breaches.

1. ASSIGNATION AND SUB-CONTRACTING:

The Contract may not be assigned except with the prior written consent of the parties. The Contract may be sub-contracted by the Company without the prior written consent of the Buyer.

1. LAW AND JURISDICTION:

The contract shall be construed in accordance with Scots Law, which shall be the proper law of the Contract and the parties hereby propagate the non-exclusive jurisdiction of the Court of Session and Aberdeen Sheriff Court in relation to any dispute arising out of the Contract.

1. CLAUSE HEADINGS:

The clause headings in these clauses are for convenience only and shall not affect the interpretation hereof in any way whatever.

1. SEVERABILITY:

Each obligation contained in any clause or sub-clause of these terms and conditions shall be treated as a separate obligation and shall be severable enforceable as such and the non-enforceability at any time of any clause or sub-clause of these clauses shall not prejudice the enforceability of the remainder.