

GENERAL TERMS AND CONDITIONS OF KEDAR RUBBER PRODUCTS

1. APPLICATION

1.1 These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract, modifications of or deviations from them must be agreed in writing in the contract document itself (e.g. purchase order etc.) or any other contemporaneous document signed by KEDAR.

1.2 The goods, products to be supplied under these General Conditions is [are] hereinafter referred to as the GOODS.

1.3 Wherever these General Conditions use the expression "in writing", the same shall mean by document or by letter, fax, electronic mail and/or by such other means as are agreed by the parties.

2. PRODUCT INFORMATION

2.1 All information and data contained in general documentation; price lists, website, brochures, publicity material etc. issued by KEDAR whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the contract.

3. DRAWING AND DESCRIPTIONS

3.1 All drawings and technical documents relating to the Goods or its manufacture submitted by KEDAR to the Purchaser, prior or subsequent to the formation of the contract, shall remain the property of KEDAR.

3.2 Drawings, technical documents or other technical information received by the Purchaser shall not, without its consent, be used for any other purpose than that for which they were provided and shall not otherwise be used or copied, reproduced, transmitted or communicated to a third party.

3.3 KEDAR shall, not later than at the date of delivery of the goods or such other time as may be agreed, provide information and drawings which are necessary to permit the Purchaser to operate and maintain the Goods. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. KEDAR shall not be obliged to provide manufacturing drawings for the Goods or for spare parts.

4. ACCEPTANCE TESTS

4.1 Acceptance tests provided for in the contract shall, unless otherwise agreed, be carried out at the place of manufacture of KEDAR during normal working hours.

4.2 If the contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

4.3 KEDAR shall notify the Purchaser in writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented despite such notice, the test report shall be sent to the Purchaser and shall be deemed to have been accepted as accurate and correct.

4.4 If the acceptance tests show the Goods not to be in accordance with the contract, KEDAR shall, without delay, remedy any deficiencies in order to ensure that the Goods complies with the contract. A new test shall be carried out if so required by the Purchaser. A new test shall, however, not be carried out if the defect is insignificant.

4.5 KEDAR shall bear all costs for the acceptance tests carried out as per clause 4.4 above at the place of manufacture. In all other cases, the acceptance tests shall be at the costs and expenses of the Purchaser. The Purchaser shall bear all traveling and boarding and lodging expenses for its representatives in connection with such tests.

5. DELIVERY, PASSING OF RISK

5.1 Any trade term may be construed in accordance with the INCOTERMS in force at the formation of the contract if the parties so agree.

5.2 If no trade term is specifically agreed, the delivery shall be Ex works [EXW].

5.3 If, in the case of delivery Ex works, KEDAR at the request of the Purchaser, undertakes to send the Goods to its agreed destination, the risk will pass not later than when the Goods is handed over to the first carrier.

5.4 Partial shipments shall be permitted unless otherwise agreed.

6. TIME FOR DELIVERY, DELAY

6.1 If the parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall start to run as soon as the contract is entered into, all official formalities have been completed, payments due at the formation of the contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

6.2 If KEDAR anticipates that it will not be able to deliver the Goods at the time for delivery, it shall forthwith notify the Purchaser thereof in writing, stating the reason, and, if possible, the time when delivery can be expected.

6.3 If KEDAR gives such notice, the Purchaser shall not be entitled to compensation for any additional costs which it incurs or may have incurred or for damages of any nature whatsoever.

6.4 If the delay in delivery is caused by any of the circumstances mentioned in Clause 11 hereof or by an act or omission on the part of the Purchaser, including that mentioned more fully Clause 7.4 hereof, the time for delivery shall be extended by such period as KEDAR deems reasonable having regard to all the circumstances of the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

6.5 If the Goods are not delivered at the time for delivery as defined in Clauses 6.1 and/or 6.2 hereof as the case may be, the Purchaser shall be entitled to liquidated damages from the last date on which the last delivery should have taken place.

6.6 The liquidated damages shall be payable at a rate of 0.5 per cent for each complete week of delay of that part of the agreed price which is properly attributable to the part of the goods which, due to delay, cannot be put to its intended use. The liquidated damages shall not exceed 5 per cent of such part of the agreed price.

6.7 If only part of the Goods is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Goods as cannot, in consequence of the delay, be used as intended by the parties.

6.8 The liquidated damages become due at the Purchaser's written demand

but not before all of the goods have been delivered. Liquidated damages shall become due and payable only if the Purchaser makes a formal demand in writing of the same which reaches KEDAR prior to the concerned delivery being made.

6.9 The Purchaser shall forfeit his right to liquidated damages if it has not lodged a claim in writing for such damages within the time mentioned in the preceding clause hereof.

6.10 Liquidated damages under Clause 6.6 are the only remedy available to the Purchaser in case of delay on the part of KEDAR. All other claims against KEDAR based on such delay shall be excluded.

6.11 If the Purchaser anticipates that he will be unable to accept delivery of the Goods at the delivery time, he shall forthwith notify KEDAR in writing thereof, stating the reason and the time when it will be able to accept delivery. The extended time shall not be beyond 30 days beyond the time originally fixed.

6.12 If the Purchaser fails to accept delivery at the delivery time without notifying KEDAR as per Clause 6.11 above it shall nevertheless pay the whole of the purchase price which becomes due on delivery, as if delivery had taken place. KEDAR shall arrange for storage of the Goods at the risk and expense of the Purchaser. KEDAR shall also, if the Purchaser so requires, insure the Goods at the Purchaser's expense.

6.13 Upon the Purchaser to accept delivery, KEDAR may by notice in writing require the Purchaser to accept delivery within a final reasonable period.

6.14 If, for any reason for which KEDAR is not responsible, the Purchaser fails to

7. PAYMENT

7.1 Unless otherwise agreed, the purchase price shall be paid as per the following:

Percentage of Purchase Price : 100%,

Time of Payment : Placement of Purchase Order.

Time shall be of the essence of the contract in so far as it relates to the payments to be made by the Purchaser to KEDAR under Clause 7 hereof.

7.2 Whatever the means of payment used, payment shall not be deemed to have been effected before KEDAR's designated bank account has been fully and irrevocably credited.

7.3 If the Purchaser fails to pay by the stipulated date, KEDAR shall be entitled to interest from the day on which such payment was due. Such interest shall be at the rate of 24% per annum on the portion of the purchase price remaining unpaid.

7.4 In case of any late payment KEDAR may, after having notified the Purchaser in writing, suspend its performance of the contract until it receives payment

7.5 If the Purchaser has not paid the amount or purchase price due to KEDAR within three months of the same becoming due, KEDAR shall be entitled to terminate the contract by notice in writing to the Purchaser and to claim compensation for the loss it has incurred.

8. RETENTION OF TITLE

8.1 The Goods shall remain the property of KEDAR until paid for in full to the extent that such retention of title is valid under the applicable law.

8.2 The Purchaser shall at the request of KEDAR assist KEDAR in taking any measures necessary to protect KEDAR's title to the Goods in the country concerned.

8.3 The retention of title shall not affect the passing of risk under Clause 5.

9. LIABILITY FOR DEFECTS

9.1 Subject to the provisions of Clauses 9.2, 9.3 and 9.4 hereof inclusive, KEDAR shall remedy any defect or nonconformity [hereinafter termed defects] resulting from faulty design, materials or workmanship.

9.2 KEDAR's liability is limited to defects which appear within a period of 60 days from delivery and only if the core characteristics and operating conditions in which the goods have been installed have been maintained within prescribed limits.

9.3 When a defect in a part of the Goods has been remedied, KEDAR shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Goods for a period of 30 days.

9.4 The Purchaser shall without undue delay notify KEDAR in writing of any defect which appears within the prescribed time. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in Clause 9.2 above. The notice shall contain a description of the defect and a statement/tabulation of the core characteristics and operating conditions of the plant for the entire accept delivery within such extended period as mentioned in the preceding Clause hereof. KEDAR may by notice in writing terminate the contract in whole or in part. KEDAR shall then be entitled to compensation for the loss it has suffered by reason of the Purchaser's default. The compensation shall be that part of the purchase price which is attributable to that part of the Goods in respect of which the contract is terminated and pre-estimated damages payable at the rate of 0.5 per cent of the purchase price of the portion of the goods which cannot be delivered as above. Period during which the defective goods had been operated/installed/maintained.

9.5 If the Purchaser fails to notify KEDAR in writing of a defect within the time limits set forth in this Clause. it loses his right to have the defect remedied.

9.6 On receipt of the notice under Clause 9.4 KEDAR shall remedy the defect without undue delay at its own cost as stipulated above.

9.7 Repair shall be carried out at the place where the goods are located and installed by the Purchaser unless KEDAR deems it appropriate that the defective part of the Goods is returned to it for repair or replacement

9.8 KEDAR is obliged to carry out dismantling and reinstallation of the part if this requires special knowledge. If such special knowledge is not required, KEDAR has fulfilled its obligations in respect of the defect when it delivers to the Purchaser a duly repaired or replaced part

9.9 If the Purchaser has given such notice as mentioned b Clause 9.4 and no defect is found for which KEDAR is liable, KEDAR shall be entitled to compensation for the costs it has incurred as a result of the notice.

9.10 The Purchaser shall at its own expense arrange for any dismantling and reassembly of equipment other than the Goods, to the extent that this is necessary to remedy the defect.

9.11 Unless otherwise agreed necessary transport of the goods and/or parts thereof to and from KEDAR in connection with the remedying of defects for which KEDAR is liable shall be at the risk and expense of KEDAR. The Purchaser shall follow KEDAR's instructions regarding such transport.

9.12 Unless otherwise agreed, the Purchaser shall bear any additional costs, which KEDAR incurs for repair, dismantling, installation and transport as a result of the Goods being located in a place other than the destination stated in the contract or, if no destination is stated, the place of delivery.

9.13 Defective parts, which have been replaced, shall be made available to KEDAR and shall be its property.

9.14 If, within a reasonable time, not exceeding 30 days from receipt of notice as per Clause 9.4 above KEDAR does not fulfill its obligations under Clause 9.6. the Purchaser may by notice in writing fix a final time, being not less than 15 days. for completion of KEDAR's obligations. If KEDAR fails to fulfill its obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works. Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by KEDAR of reasonable costs incurred by the Purchaser shall be in full settlement of KEDAR's liabilities for the said defect.

9.15 KEDAR is not liable for defects arising out of materials provided, or a design stipulated or specified by the Purchaser, even and use of non standard grinding media and material, wrong driving direction or any other reasons of purchaser.

9.16 KEDAR's liability does not cover defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Purchaser, or by alterations carried out without KEDAR's consent in writing.

9.17 KEDAR is liable only for defects which appear under the conditions of operation provided for in the contract and under proper use of the goods and not otherwise.

9.18 Finally KEDAR's liability does not cover normal wear and tear or deterioration.

9.19 Notwithstanding the provisions here of KEDAR shall not be liable for defects in any part of the goods beyond the warranty/guarantee life of the goods. For the purpose of clarity it is hereby specified that the warranty/guarantee life the goods shall commence on and from the day that physical possession of the said goods is made over by KEDAR to the Purchaser.

9.20 If in specified written period of warranty/guarantee life of goods, but if the purchaser falls in clause 9.15 and 9.16 than the given specified period of warranty/guarantee life of goods would be waved automatically with that effective date and KEDAR will not responsible and not liable for such matter.

9.21 Save as stipulated in Clauses 9.1 and 9.2 KEDAR shall not be liable for other defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of KEDAR's liability shall apply in all circumstances.

10. LIABILITY FOR DAMAGE TO PROPERTY CAUSED BY THE GOODS

10.1 The Purchaser shall indemnify and hold KEDAR harmless to the extent that KEDAR incurs liability towards any third party in respect of any damage for which KEDAR is not liable towards the Purchaser according to the second and third paragraphs of this Clause.

10.2 KEDAR shall not be liable for loss or damage caused by the goods: (a) to any (movable or immovable) property where the damage occurs while the goods are in the Purchaser's possession, or (b) to products manufactured by the Purchaser. or to the products of which the Purchaser's products form a part or for loss or damage to any property, where the damage is caused by these products because of properties in the goods.

10.3 KEDAR shall under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

10.4 If a claim for loss or damage as described in this Clause is raised by a third party against either party to the contract, the latter shall forthwith notify the other part thereof.

10.5 KEDAR and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them, where the claim is based on damage alleged to have been caused by the goods. The liability as between KEDAR and the Purchaser shall however, always be settled by arbitration in accordance with Clause 14.

11. FORCE MAJEURE

11.1 Either party shall be entitled to suspend performance of its obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances i.e. circumstance beyond the control of the parties such as war, extensive military mobilization, insurrection, terrorism, earthquake, flood, fire and strikes, natural calamities.

11.2 A circumstance referred to in this Clause whether occurring prior to or after the formation of the contract shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract

11.3 Regardless of what might otherwise follow from these General Conditions either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under Clause 11.1 for more than three months.

12. CONSEQUENTIAL LOSSES

12.1 Save as otherwise stated in these General Conditions there shall be no liability of KEDAR whether in contract, warranty, tort (including negligence or strict liability) or otherwise towards the Purchaser for loss of production, loss of profit loss of use, loss of contracts or for any other special, indirect, incidental or consequential damages [which expression shall include, but

not be limited to. loss of anticipated profits. loss of savings, loss of publicity. loss of reputation, loss of opportunity and all other economic loss] of any kind or nature whatsoever.

12.2 Under no circumstances, and in no event, will KEDAR be liable for personal injury or property damage or any other loss, damage, cost of repairs or incidental, punitive, special, consequential or liquidated damages of any kind, whether based upon warranty, contract, strict liability, negligence or any other cause of action arising in connection with the design, manufacture, sale, transportation, installation, use or repair of the goods sold by KEDAR whether caused by the concurrent and/or contributory negligence of Purchaser. KEDAR or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction. The Purchaser hereby acknowledges and agrees that under no circumstances, and in no event shall KEDAR's liability, if any, exceed the net sales price of the defective goods.

13. DISPUTES AND APPLICABLE LAW

13.1 All disputes arising out of or in connection with the contract shall be finally settled under the Rules of International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL) by one or more arbitrators appointed in accordance with the said rules.

13.2 The contract shall be governed by the laws of the Republic of India. The legal matter subject to local jurisdiction centre of KEDAR work place area.

14. GENERAL

14.1 Any relaxation, indulgence or concession in relation to any of the above matters granted or made by KEDAR shall not in any way prejudice the strict rights of KEDAR under this agreement against the Purchaser.

14.2 Time shall be essence of this agreement in so far as it relates to the observance or performance by the Purchaser of all and/or any of its obligations and covenants hereunder including the payment of the agreed consideration to KEDAR.

14.3 The failure on the part of KEDAR to insist upon the punctual performance of any of the obligations of the Purchaser hereunder or failure of KEDAR to exercise any right or remedy available to it in the

contract or any extension or forbearance or indulgence given by KEDAR shall not constitute a waiver by KEDAR and shall not prejudice the rights of KEDAR under the contract against Purchaser.

14.4 In performing its duties and obligations under the contract the Purchaser shall at all times:-

(i) act in good faith towards KEDAR:

(ii) adhere to and implement all reasonable instructions and requests of KEDAR.

(iii) provide to KEDAR with any and all documentation and information relating the plant and its operating conditions as may be received by the Purchaser.

(iv) co-operate and work closely with KEDAR in ensuring that the brand image, goodwill, and reputation of KEDAR are not in anyway adversely affected.

14.5 Each party shall treat all confidential information received by it from the other party as secret and confidential and take all necessary steps to preserve such confidentiality. Neither party shall use any confidential information other than for the purpose of performing its obligations under the contract and, in particular, shall not use or seek to use such confidential information to obtain [whether directly or indirectly] any commercial, trading or other advantage [whether tangible or intangible] over the disclosing party. Neither party shall be entitled to disclose any such confidential information to any other party without the prior written consent of the disclosing party.

14.6 Confidential information mentioned in the preceding paragraph means all trade secrets, business plans and other information relating (whether directly or indirectly) to business of the other party in whatever form which is acquired by or disclosed to the other party pursuant to the contract but excluding information which at the time it was acquired or disclosed is already in the public domain or is pursuant to any law requirement or order of any Court or regulatory authority.

14.7 The obligations of the parties herein with regard to confidentiality and confidential information that may be acquired by either party shall continue not only without limit in time but also notwithstanding termination of the contract.

KEDAR RUBBER PRODUCTS

Mfg. : All Types of Precision Rubber Products Specifically Ball Mill Rubber Liners.

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