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EDEN TYRE SALES LTD

Head Office
Eden House,
High Holborn Rd,
Codnor Gate Industrial Estate,
Ripley,
Derbyshire DE5 3NW

TERMS AND CONDITIONS FOR THE SALE OF GOODS

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.
- | | |
|---|---|
| <p>"Contract"
"Customer"
"Delivery Point"
"Eden"
"Goods"</p> | <p>any contract between Eden and the Customer for the sale and purchase of the Goods, incorporating these conditions
the person, firm or company who purchases the Goods from Eden
the place where delivery of the Goods is to take place under condition 4
Eden Tyre Sales Limited, 1.1 & 1.2 Amber Business Centre, Greenhill lane, Riddings, Alfreton, Derbyshire, DE55 4BR
any goods agreed in the Contract to be supplied to the Customer by Eden (including any part or parts of them)</p> |
|---|---|
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

2 APPLICATION OF TERMS

- 2.1 The Customer shall provide signed acceptance of these conditions upon opening a customer account with Eden and, subject to any variation under **condition 2.3**, any Contract entered into after this time shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all Eden's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed on behalf of Eden. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Eden which is not set out in the Contract. Nothing in this condition shall exclude or limit Eden's liability for fraudulent misrepresentation.
- 2.4 Any typographical error or omission in any sales literature, quotation, price list, acceptance, offer, invoice or other document or information issued by Eden shall be subject to correction without any liability on the part of Eden.
- 2.5 Any advice or recommendation given by Eden or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Eden is followed or acted upon entirely at the Customer's own risk, and accordingly Eden shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 Each order or acceptance of a quotation for Goods by the Customer from Eden shall be deemed to be an offer by the Customer to buy Goods subject to these conditions.
- 2.7 No order placed by the Customer shall be deemed to be accepted by Eden until a written acknowledgement of order is issued by Eden or (if earlier) Eden delivers the Goods to the Customer.
- 2.8 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.9 Any quotation is valid for a period of 30 days only from its date, provided that Eden has not previously withdrawn it.

3 DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in Eden's quotation or acknowledgement of order.
- 3.2 Eden reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements.

4 DELIVERY

- 4.1 Unless otherwise agreed in writing by Eden, delivery of the Goods shall take place at Eden's place of business (the **"Delivery Point"**).
- 4.2 The Customer shall take delivery of the Goods within 5 days of Eden giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by Eden for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions Eden shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Eden's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Eden is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 4.5.1 **risk in the Goods shall pass to the Customer (including for loss or damage caused by Eden's negligence);**
- 4.5.2 **The Goods shall be deemed to have been delivered; and**
- 4.5.3 **Eden may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).**
- 4.6 The Customer shall inspect and check the Goods immediately on delivery and shall give Eden notice in writing within 2 working days after the day of delivery as to any alleged defect together with details of the alleged defect. The Customer will permit Eden to inspect any allegedly defective Goods. Failing such notice, the Goods shall be deemed to be in accordance with the Contract and the Customer shall be deemed to have accepted the Goods and to be liable to pay for the Goods.
- 4.7 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.8 If Eden delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity accepted by Eden, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.9 Goods which have been supplied in accordance with the Contract may not be returned to Eden without Eden's prior written consent. If Eden consents to the return of any Goods, the Customer is responsible for the cost of returning such Goods to Eden's premises and, unless otherwise agreed, shall pay to Eden a re-stocking fee equal to 10% of the price of the Goods.
- 4.10 Any consent by Eden to accept the return of Goods under **condition 4.9** is conditional upon the Goods being unused and in the same condition as when supplied by Eden.
- 4.11 Any liability of Eden for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5 RISK/TITLE

- 5.1 The Goods are at the risk of the Customer from the time of delivery or deemed delivery.
- 5.2 Ownership of the Goods shall not pass to the Customer until Eden has received in full (in cash or cleared funds) all sums due to it in respect of:
- 5.2.1 **The Goods; and**
- 5.2.2 **all other sums which are or which become due to Eden from the Customer on any account.**
- 5.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 5.3.1 **hold the Goods on a fiduciary basis as Eden's bailee;**
- 5.3.2 **store the Goods (at no cost to Eden) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Eden's property;**
- 5.3.3 **not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and**
- 5.3.4 **maintain the Goods in satisfactory condition and keep them insured on Eden's behalf for their full price against all risks to the reasonable satisfaction of Eden. On request the Customer shall produce the policy of insurance to Eden.**
- 5.4 Until ownership of the Goods has passed to the Customer (and provided the Goods are still in existence and have not been resold), Eden shall be entitled at any time to require the Customer to deliver up the Goods to Eden and, if the Customer fails to do so forthwith, to enter upon the premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 5.5 Eden hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business. If the Customer sells the Goods prior to paying the full price thereof the Customer shall hold the proceeds of sale on trust for Eden and shall immediately pay the proceeds of sale into a separate bank account. Eden shall be entitled to call upon the Customer to assign all claims that the Customer may have against any party which has purchased the Goods from the Customer.
- 5.6 The Customer 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 Eden.
- 5.7 Eden shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Eden.
- 5.8 The Customer grants Eden, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Eden has a right to repossess the Goods under **condition 5.4**, to recover them.
- 5.9 Where Eden is unable to determine whether any Goods are the goods which Eden has a right to repossess under **condition 5.4**, the Customer shall be deemed to have sold all goods of the kind sold by Eden to the Customer in the order in which they were invoiced to the Customer.
- 5.10 The Customer shall indemnify Eden in respect of all costs and expenses incurred by Eden as a result of Eden enforcing any right granted to Eden pursuant to this **condition 5** and any costs and expenses arising out of any judgement in favour of Eden in respect of any invoice which remains unpaid by the Customer.
- 5.11 On termination of the Contract, howsoever caused, Eden's (but not the Customer's) rights contained in this **condition 5** shall remain in effect.

6 PRICE

- 6.1 Unless otherwise stated in Eden's quotation or acknowledgement of order, the price for the Goods shall be Eden's list price for the Goods prevailing on the date of delivery or deemed delivery.
- 6.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.

7 PAYMENT

Reg.Office: Eden Tyre Sales Ltd. 5 Prospect Place, Millennium Way,
Pride Park, Derby. DE24 8HG
Registered in England No 1570284

PLEASE STATE WHY YOU ARE COMPLEATING THIS FORM:-

- UPDATE MY ACCOUNT DETAILS
- APPLYING FOR A CASH OR CHEQUE UPON DELIVERY
- APPLYING FOR A WEEKLY CREDIT ACCOUNT
- APPLYING FOR A 30 DAY CREDIT ACCOUNT

- 7.1 Unless otherwise agreed, Eden shall issue its invoices to the Customer immediately upon the despatch of the Goods to the Customer.
- 7.2 Subject to **condition 7.5**, payment of the price for the Goods is due in pounds sterling within 30 days of receipt by the Customer of Eden's invoice.
- 7.3 Time for payment shall be of the essence.
- 7.4 No payment shall be deemed to have been received until Eden has received cleared funds.
- 7.5 All payments payable to Eden under the Contract shall become due immediately on its termination despite any other provision.
- 7.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Eden to the Customer.
- 7.7 Without prejudice to any other right or remedy, Eden reserves the right to set off any amount owed at any time by Eden to the Customer against any amount payable by the Customer to Eden under the Contract.
- 7.8 If the Customer fails to pay Eden any sum due pursuant to the Contract, the Customer shall be liable to pay interest to Eden on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Lloyds TSB plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 8 QUALITY**
- The Customer acknowledges that Eden does not manufacture or produce the Goods and, accordingly, Eden shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Eden but otherwise gives no warranty in connection with the Goods.
- 9 LIMITATION OF LIABILITY**
- 9.1 Subject to **condition 4**, the following provisions set out the entire financial liability of Eden (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 9.1.1 any breach of these conditions;
- 9.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these conditions excludes or limits the liability of Eden:
- 9.3.1 for death or personal injury caused by Eden's negligence; or
- 9.3.2 for any matter which it would be illegal for Eden to exclude or attempt to exclude its liability; or
- 9.3.3 for fraud or fraudulent misrepresentation.
- 9.4 Subject to **condition 9.3**:
- 9.4.1 Eden's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- 9.4.2 Eden shall not be liable for any loss or deferment of profit, loss of revenue, loss of use, business interruption, loss of contract, loss of reputation, credit or goodwill or loss of opportunity, or any other special, indirect, consequential, or pure economic loss, costs, damages, charges or expenses.
- 10 TERMINATION**
- 10.1 Without prejudice to any other rights or remedies which Eden may have, Eden may terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:
- 10.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified to make such payment;
- 10.1.2 the Customer commits a material breach of any of the terms of the Contract (other than failure to pay any amounts due under this Agreement) and (if such a breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing of the breach;
- 10.1.3 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 10.1.4 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 10.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- 10.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 10.1.7 a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- 10.1.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- 10.1.9 the Customer, being an individual, is the subject of a bankruptcy petition or order;
- 10.1.10 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 10.1.11 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **condition 10.1.3 to condition 10.1.10** (inclusive); or
- 10.1.12 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 10.1.13 there is a change of control of the Customer.
- 10.2 On termination of the Contract for any reason:
- 10.2.1 the Customer shall immediately pay to Eden all of Eden's outstanding unpaid invoices and interest and, in respect of the Goods supplied but for which no invoice has been submitted, Eden may submit an invoice, which shall be payable immediately on receipt;
- 10.2.2 in respect of all unpaid debts due from the Customer Eden shall have a general lien on all Goods and property of the Customer in its possession (whether worked on or not) and shall be entitled on the expiration of fourteen days notice in writing by Eden to the Customer to dispose of such goods or property in such manner and at such price as Eden considers proper and to apply the proceeds of sale towards such debts and shall account to the Customer for any excess of the sale price over the debts after deducting the costs to Eden of such disposal; and
- 10.2.3 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 11 ASSIGNMENT**
- 11.1 Eden may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Eden.
- 12 FORCE MAJEURE**
- Eden reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Eden including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to Eden to terminate the Contract.
- 13 GENERAL**
- 13.1 Each right or remedy of Eden under the Contract is without prejudice to any other right or remedy of Eden whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by Eden in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by Eden of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 14 COMMUNICATIONS**
- 14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- 14.1.1 (in case of communications to Eden) to its registered office or such changed address as shall be notified to the Customer by Eden; or
- 14.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to Eden by the Customer.
- 14.2 Communications shall be deemed to have been received:
- 14.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 14.2.2 if delivered by hand, on the day of delivery; or if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.