

## STANDARD TERMS AND CONDITIONS OF SALE

### Industrial Rubber Products

WARCO BILTRITE products are sold commercially for multiple applications as determined by the end-user. Information on certain physical properties of our various styles and grades is provided in our product literature, but such information is unrelated to any particular use or application. Determination of the suitability of the goods for the uses and applications contemplated by Buyer and others shall be the sole responsibility of the Buyer or user. Consultation with qualified engineers and testing laboratories is recommended. WARCO BILTRITE does not recommend any of its products for any particular use or application. The purchaser or user shall assume full responsibility for the adequacy and suitability for the intended use. Rubber products may fail as a result of temperature variances, excessive pressures, abrasion or damaging substances. The wear life of rubber products is limited by the circumstances and conditions of use. Rubber materials should be inspected regularly and should be replaced as appropriate for operational and safety requirements and the prevention of injury or damage to persons and property.

Our rubber products, except where indicated, are a proprietary blend of various polymers formulated to meet stated physicals and specifications. The named polymer is not necessarily the polymer representing the highest percentage of the polymer blend. The various specification call outs are a valuable guide in selecting the type and grade of sheet rubber for a particular application. In any application, the customer should evaluate the performance requirements and conditions that will affect the working life of the rubber product. Field should be performed before the type of rubber is selected. If the customer's quality assurance incorporates the testing of rubber material, the test criteria should include the physical property call outs of the specifications that are most critical to its application. **Polymer type alone may not be adequate for the selecting of the rubber that is best suited for a specific application.**

ASTM basic requirements for physical properties are based on values obtained from standard laboratory test specimens prepared and tested in accordance with the applicable ASTM test methods. Test results from specimens prepared from finished products may not duplicate values obtained from standard test specimens. Per ASTM D2000, Section 7.1, Buyer agrees that when standard test specimens are cut from finished parts in accordance with Practice D 3183, a deviation to the extent of 10% on tensile strength and elongation values is permissible.

Unless stated otherwise, products are manufactured to meet standard RMA Commercial guidelines. Per RMA, roll goods may contain multiple pieces.

**1. PAYMENTS:** Seller may require full or partial payment in advance at any time if in its sole judgment, the financial condition of the Buyer does not justify the terms of payment specified herein. A charge of 1-1/2 percent (1-1/2%) per month (or at the highest rate permitted by law) shall be payable on all overdue accounts. Orders will not be processed until payment terms are approved by Seller's Credit Department.

**2. PRICES SUBJECT TO CHANGE:** Seller may change any price, shipment or freight term in effect at any time and from time to time by giving Buyer at least fifteen (15) days written notice thereof. Buyer's failure to give Seller a written objection to any such change within ten (10) days after receipt of notice shall constitute acceptance of such change. Where objection is made, Seller shall advise Buyer within ten (10) days thereafter whether Seller will (a) continue to deliver at the price or on the terms in effect prior to the announced change, or (b) cancel this contract. Any cancellation shall be effective upon Buyer's receipt of Seller's notice and shall be without further obligation of either party to the other except to perform or pay all obligations accrued through date of cancellation. Provided however, that in the case of non-stock items ordered specifically for Buyer's use, Seller reserves the right to increase prices to cover the increases in its costs arising from increases in the cost of materials or labor rates which become effective between the date of this acknowledgment and the date of shipment. In such event, this Agreement shall remain in effect at the price adjusted to reflect said increases.

**3. MINIMUM PURCHASE:** Stock sheet Item = One roll minimum.  
Non-stock sheet and Custom items = Please request quote.

**4. TAXES:** Buyer shall reimburse Seller for all taxes, excises or other charges which Seller may be required to pay to any governmental entity (national, state or local) upon the sales, production or transportation of the goods sold hereunder.

**5. DELIVERY:** Unless otherwise specified herein, goods will be delivered F.O.B. point of shipment. Seller will determine the point of origin of shipment, the method of transportation, and the routing of shipment. Partial deliveries shall be accepted by the Buyer and paid for at the prices and terms hereunder. Seller does not guarantee any delivery or completion date. In the event of delay in delivery of goods, Seller shall not be liable or responsible for any loss, damage, expense or charge of any kind, direct or indirect, suffered or incurred by Buyer as a result of such delay.

**6. TITLE AND RISK OF LOSS:** Title and risk of loss in the goods shall pass to Buyer upon Seller's delivery to carrier at the shipping point, notwithstanding the terms of shipment specified herein.

**7. WARRANTIES AND DISCLAIMERS:** Goods furnished under this Agreement shall conform to the description herein. All first quality goods are warranted to be free from defects in material and workmanship at the time of shipment. Seller shall convey good title to buyer. Seller further warrants that the goods sold hereunder do not infringe any valid United States patent, but Seller does not warrant, however, that the use of the goods or products made therefrom, either alone or in conjunction with other materials, will not infringe any valid United States patent. **THE WARRANTIES SET FORTH IN THIS PROVISION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. SELLER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. ALL PRODUCTS ARE SOLD AND WARRANTED ONLY PURSUANT TO OUR PUBLISHED TERMS AND CONDITIONS OF SALE. WE ARE NOT RESPONSIBLE TO THE USER FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES RESULTING FROM PRODUCT USE OR PROCESSING.**

**8. CLAIM PERIOD AND REMEDIES:** Prompt written notice shall be given to Seller of any claim of failure of goods to conform to the warranties hereunder. Should any failure to conform to these warranties appear under normal and proper use within the period of one (1) year from the date of shipment to the Buyer, Seller shall correct such nonconformity, at its option, by repair or replacement of the defective goods, or by the refund of the purchase price thereof with due allowance made for the service rendered by the goods returned. In no event shall Buyer commence any action under this Agreement later than one year after receipt of the goods. The remedies provided above are the Buyer's sole remedies for any failure of Seller to comply with its obligations. Correction of any non-conformity by repair or replacement or by refund of the purchase price of the

nonconforming goods (less allowance for use) shall constitute fulfillment of all obligations of Seller with respect thereto, whether the claims of Buyer are based in contract, or tort (including negligence), or otherwise.

**9. LIMITATION OF LIABILITY:** Seller shall not be liable in contract, in tort (including negligence), or otherwise for damage or loss of other property, loss of profits or revenue, loss of use of property or equipment, claims of customers of the Buyer, or for any special, indirect, incidental, or consequential damages whatsoever. Under no circumstances shall Seller's liability exceed the purchase price of the goods in respect of which damages are claimed.

**10. PRODUCTS SUITABILITY AND LENGTH OF SERVICE:** Determination of the suitability of the goods for the uses and applications contemplated by Buyer and others shall be the sole responsibility of the Buyer or user. No guaranty is given with respect to length of service on any particular application. Suggestions or recommendations made by Seller in its product literature concerning uses or applications of the goods are believed to be reliable, but Seller makes no warranty or guaranty of results to be obtained since the conditions of the use and application by Buyer and others are beyond Seller's control.

**11. FORCE MAJEURE:** Seller shall not be liable for failure to perform or for delay in performance due to fire, flood, strike or other labor difficulty (Seller shall not be required to settle any labor matter against its own best judgment), act of God, act of any government authority, acts or omissions of the Buyer, riot, embargo, explosion, accident, breakdown of machinery or equipment, shortage of or inability to obtain fuel, power, raw materials, equipment, transportation of the product at usual prices or usual sources, or due to any other cause beyond its reasonable control. Quantities so affected by such circumstances may be eliminated without liability, but this Agreement shall otherwise remain unaffected.

**12. RETURNED GOODS:** No goods may be returned without Seller's prior written authorization. Each request for exchange or return shall describe the condition of the goods and the reasons for the requested return or exchange. If the Seller agrees to accept a return or exchange, the Buyer shall pay return transportation cost and a restocking charge; the restocking charge will be determined based upon the Seller's ability to resell the exchanged or returned material and the reason for the return.

**13. QUANTITY VARIANCE:** Due to manufacturing variances, the quantity of goods delivered will be within 10%, more or less, of the quantity specified and shall be charged at the unit price herein.

**14. ENTIRE AGREEMENT:** This Agreement constitutes the complete and final Agreement of sale and purchase of the goods specified herein and supersedes all prior contracts and discussions. No modification hereof shall be effected by the use of purchase order, acknowledgment, acceptance, or other forms at variance with or in addition to the terms and conditions contained herein. No modification shall be effected in any manner other than in writing and signed by the party claimed to be bound thereby.

**15. GOVERNING LAW:** This contract shall be governed by and construed under the laws of the State of California.

**16. TRANSPORTATION POLICY:** All deliveries will be made F.O.B. Point of Shipment. Freight calculated and billed on all Prepay & Bill orders. Applicable surcharges and/or accessorial charges are not covered and will be billed accordingly. All price page and catalog weights are approximate and actual shipping weights may vary from these listings. In case of dispute, actual shipping weights will apply. **Origin, Method of Shipping and Routing:** Seller will determine the point of origin of shipment, the method of transportation and the routing of shipment. Purchasers requiring shipment by a method or routing other than that will be billed any excess or premium in transportation charges. If Seller elects to ship by other than common carrier, the full transportation charges will be prepaid and any freight charges billable will be calculated and billed. **Purchaser Pick Up:** No allowance will be made in lieu of transportation if the buyer accepts shipment at the factory or the warehouse or freight station. Transportation charges will not be deducted from the selling price. Pick up of order must be made within three business days.

**17. CONCEALED DAMAGE:** Seller will not participate in any settlement of claims for concealed damage. Upon receipt of any shipment, Buyer must unpack immediately and, if damage is discovered, must:

- Not move the product from the point of examination
- Retain shipping container and packing material
- Notify the carrier's agent to make an inspection and confirm in writing
- Send Seller a copy of the carrier's inspection report
- Make a claim for damage with the carrier
- Recovery for any damage to merchandise incurred during shipping shall be the sole responsibility of Buyer. Any such damage shall not defeat or otherwise affect the obligation of Buyer to pay all amounts due Seller with respect to the damaged goods.

**18. CANCELLATION:** Requests for cancellation or modification of orders must be submitted in writing and received by Seller at least 2 days prior to shipment. Any cancellation or modification will be effective only when acknowledged in writing by Seller and can be made subject to status of production of goods. Orders for merchandise produced specifically for a customer cannot be canceled once goods are produced.

**19. ACCEPTANCE OF ORDERS:** Issuance of any Catalog or Price List does not constitute an offer for the sale of any products described therein. All orders are subject to the acceptance of Seller. All orders accepted by Seller are accepted on the understanding that Buyer, by placing the order, has agreed to these Standard Terms & Conditions of Sale and that they are therefore part of the Buyer's order.

**20. ATTORNEYS' FEES AND VENUE:** In any action to collect amounts due Seller with respect to sales made to Buyer, arising out of or relating to this Agreement or any such sales, or in which a party seeks an interpretation of this Agreement or asserts it as a defense, the prevailing party shall be entitled to recover attorneys' fees in an amount determined by the Court to be reasonable, as well as such party's costs of suit. All notices, requests, claims and other communications by Buyer with respect to this Agreement or sales hereunder shall be directed to Seller at its executive offices at 1337 Braden Court, Orange, California 92868 (714) 532-3355. Any action brought by Buyer against Seller must be brought in a state or federal court located in Orange County, California, and any action brought in any other location shall, upon appropriate motion by Seller, be dismissed.

Update January 20, 2021

West American Rubber Company, LLC | 1337 Braden Court, Orange, California 92868  
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