

Standard Terms & Conditions of Sale Momentive Performance Materials Greater China

1. These Standard Terms and Conditions of Sale ("T/C") shall apply to all purchase of products and materials from Momentive Performance Materials entities incorporated in the Greater China region, including China mainland, Hong Kong and Taiwan ("Momentive Greater China Entities"). "Seller" shall mean the relevant selling entity of the Momentive Greater China Entities from whom Buyer purchases the products. By purchasing products from Seller, Buyer confirms that the T/C applies. Even if Buyer sends Seller any counter-proposal (including without limitation another form of agreement, or modifications to the T/C, whether appearing or endorsed on or otherwise accompanying any of Buyer's orders or requests to modify any order, or modifications to these conditions of sale), the T/C will still govern the sale and purchase of Seller's products.

2. **TERMS AND CONDITIONS OF SALES.** Any products or materials Buyer purchases from Seller by electronic, phone, paper or any other form of transmission ("Products") are sold subject to the following:

- a. If Buyer has a fully signed additional sales contract and/or purchase order with Seller, then any term in that sales contract/purchase order that conflicts with this T/C will not be applied to the sales. The T/C together with the sales contract/purchase order, being hereinafter sometimes collectively referred to as a "Sales Agreement" shall be the governing sales agreement of the sales.
- b. If Buyer does not have a fully signed additional sales contract/purchase order with Seller, then this T/C is the complete sales agreement of the sales and may be hereinafter alone called a "Sales Agreement".

3. **PRICE.** Prices for Products shall be determined by the confirmation Buyer receives from Seller or, in the absence of such confirmation, by Seller's list prices current at the time of the requested delivery date, provided however that in the event there is an increase in the published list price for the Products at any time or times prior to actual shipment of the Products ordered by Buyer, Seller has the right to increase the price accordingly (including, for the avoidance of doubt, in any case where the price for the Products was determined by the confirmation Buyer receives from Seller as aforesaid) and Buyer's orders shall consequentially be re-priced to the published list price current at the time of actual shipment of the Products. Unless otherwise agreed in writing, (i) prices for Products shall be in US Dollars F.O.B. point of shipment (freight, insurance, customs clearance and permits to be arranged for and paid by Buyer), and (ii) payment terms shall be net thirty (30) days from the date of invoice unless otherwise agreed in a sales contract/purchase order. Costs of shipping by means or routes other than those selected by Seller, shall be borne by Buyer. Seller's prices do not include any governmental, state or local tax, transportation tax, sales, value-added or goods and services tax or other tax and Seller shall separately indicate on its invoice(s) any tax required to be imposed. Buyer shall reimburse Seller for Seller's costs of collection should Buyer fail to pay Seller in a timely manner, including interest at 1 % per month (whether before or after judgment). Title to Products purchased hereunder, and all risk of loss or damage with respect thereto, shall pass to Buyer at the time Products is transferred by Seller to a commercial transportation carrier for shipment to Buyer.

4. **DELIVERY.** All delivery dates are approximate and may be changed at Seller's sole discretion. If shipments are delayed by Buyer, payments shall become due on the date when Seller is prepared to make shipment. If shipment hereunder is delayed or canceled by Buyer, payments shall be made based on the purchase price and the percentage of completion of the Products. In the event of any such delay, title shall pass to Buyer and Seller will hold Products at Buyer's risk and expense. Notwithstanding the passing of title, if the Buyer fails to collect or take delivery of the materials for a period of 30 days after the delivery date has been confirmed by MOMENTIVE, MOMENTIVE may, at its sole discretion, dispose of

the materials in such manner as it deems fit, without any liability to Buyer. Buyer undertakes to reimburse and compensate MOMENTIVE for all expenses incurred and shall further indemnify MOMENTIVE against claims or losses arising from such disposal and Buyer's failure to collect or take delivery of the materials. If at any time Buyer's financial condition does not, in Seller's judgment, justify continuance of shipments of Products under the terms of payment originally specified, Seller may require full or partial payment in advance or shall be entitled to cancel any order then outstanding without being subject to any cancellation, charges or other liability. In no event shall Seller be liable for consequential, special, incidental or exemplary damages based on any delay in delivery or failure to deliver Products.

5. **LIMITED WARRANTY.** Products sold by Seller to Buyer conform to the manufacturers' specifications as set forth in the applicable product certification delivered to Buyer. Buyer will inspect all products Buyer receives for damage, defect or shortage promptly after Buyer receives them, and will give Seller prompt notice of any damage, defect or shortage that Buyer finds. Buyer must give Seller notice of any defect within one month after the date of delivery or immediately after the date the Products are used, whichever comes first. Seller may, at Seller's option, either replace the Products in question or refund its purchase price and ask the Products to be returned. This is Buyer's exclusive remedy for breach of warranty. Buyer should not return Products until Seller agrees that Buyer may do so. Should applicable law prohibit this limitation of Buyer's remedies, then Seller agrees that the maximum amount Buyer may claim from Seller is twice the net purchase price Buyer actually paid Seller. **THIS LIMITED WARRANTY IS GIVEN ONLY TO BUYER AND DOES NOT EXTEND TO ANY SUBSEQUENT PURCHASER OR TRANSFEREE OF SELLER'S PRODUCTS. BUYER IS NOT ENTITLED TO EXTEND OR TRANSFER THIS WARRANTY TO ANY OTHER PARTY. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

6. **LIMITATION OF CLAIMS.** Seller will not be responsible for any harm arising out of Buyer's purchase, possession or use of any Products supplied by Seller, Buyer's use of any function on Seller's web-sites (such as one of Seller's wizards) or any technical advice Seller may offer, except as agreed in the Limited Warranty set out above. **SELLER WILL NOT BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF ANY SUBSTITUTE FOR THE PRODUCTS BUYER BOUGHT, CLAIMS OF THIRD PARTIES OR INJURY TO PERSON OR PROPERTY AND BUYER WILL INDEMNIFY SELLER IN RESPECT OF ANY SUCH CLAIMS WHATSOEVER.**

7. **TECHNICAL ADVICE AND OTHER SERVICES.** Buyer is responsible for the design, processing, testing and labeling of any products that Buyer makes using Products Buyer buys from Seller and Buyer will not rely on anything on Seller's web site or any statement by Seller about the suitability of Products or services Seller provide. Buyer has tested and investigated Products sold by Seller enough to form an independent judgment concerning their suitability for the use, conversion or processing intended by Buyer and will not make any claim against Seller based on Seller's technical advice, statements, data, services or recommendations.

8. **PATENTS.** Any suggestions Seller makes about possible articles, designs or uses of Seller's Products do not give Buyer a license under any patent covering such articles, designs or uses, nor are they a recommendation for use of such Products, articles or designs which may infringe any patent. Further, no rights under any patent, trademark, copyright, trade secret, or any other intellectual property right is granted, by implication or otherwise, by Buyer's purchase

from Seller of any Products. Seller will defend Buyer if there is a claim that Products manufactured by Seller, as Seller delivers them to Buyer, infringe another person's patents, and if necessary will either refund the purchase price or obtain for Buyer a license under those patents.

9. EVENTS BEYOND SELLER'S CONTROL. Seller and Buyer will not be responsible if they cannot perform under the Sales Agreement due to events beyond their control occur which make it impossible or commercially unreasonable for them to perform, including so-called "Acts of God" or "force majeure" events.

10. ENVIRONMENTAL COMPLIANCE. Seller will provide Buyer Material Safety Data Sheets ("MSDS") and Buyer will provide the MSDS to all those required by law to receive them. Buyer will take such precautions as may be appropriate for hazards identified in the MSDS and properly manage and dispose of all wastes and residues resulting from Buyer's use of the Products in accordance with applicable laws and regulations. Buyer agrees to dispose of disposable packaging as required by any applicable disposal or recycling laws.

11. EXPORT CONTROL COMPLIANCE. Buyer ensures that products, technology or software Buyer receives from Seller are exported by Buyer only in compliance with applicable laws, including U.S., China, Hong Kong and Taiwan export control laws and regulations. Buyer certifies that it will not use or knowingly support the use by others of such products, technology or software in the design, development, production or use of nuclear, chemical or biological weapons or ballistic missiles.

12. ELECTRONIC COMMERCE. Seller may offer Products for sale using the Internet, e-mail or other computer-based electronic communications methods. All sales of products made using any such method will be governed by the terms of the Sales Agreement, and by any additional terms set out or referenced in Seller's Internet site or electronic communications. In the event of any conflict between the Sales Agreement and such additional terms, the Sales Agreement shall control. Buyer may not share any password, access code or similar credential that may be issued to it by Seller, and Seller reserves the right to suspend or revoke any such credential. Buyer is solely responsible for ensuring the security and integrity of its ordering process. Any information provided by Seller via any Internet site or electronic communication (i) is subject to correction or change without notice, and (ii) is provided for the sole use of Buyer for purposes of facilitating individual transactions involving the purchase and sale of Seller's products. Buyer agrees that it shall not rely upon any such information for any purpose other than making individual purchases and shall not seek to assert such information against Seller for any other purpose. Buyer specifically agrees that Seller may issue electronic invoices for any purchases of products made using the Internet, e-mail or any other computer-based electronic communications method, and agrees to honor such invoice as if it had been delivered in writing.

13. TERMINATION. Either party may terminate any Sales Agreement upon thirty (30) days' prior written notice, in the event the other party breaches any products term thereof or files bankruptcy and immediately where any administrator, liquidator, receiver and/or manager or bankruptcy trustee is appointed or application for such appointment has been made in respect of either party or its assets ("insolvency event"); provided, however that during such notice period, the party in default may cure its default and thereby abate the termination; provided, further, that if such default shall require a longer period to remedy, so long as the party in default has taken reasonable steps within such period to commence the curing of the default, the termination shall be abated as long as such steps continue to be taken. If Buyer is in default hereunder or files bankruptcy or upon the occurrence of an insolvency event, Seller may suspend shipments of products without liability to Buyer. In any

event, Seller can terminate any Sales Agreement with Buyer without cause by providing thirty (30) days advance written notice without being subject to any cancellation, charges or other liability.

14. MEDICAL APPLICATION. Buyer understands that Seller's Products are not intended for use in any medical application involving permanent implantation in the human body, or any such implantation lasting longer than 29 days, and agrees not to use any of Seller's Products for any such application, or for any other application into which, to Buyer's knowledge, Seller has previously declined to sell Products.

15. BUSINESS PRACTICE. In case Buyer imports Products from Seller, Seller commits to comply with the law and regulation of exporting country imposed on Seller and, Buyer commits to comply with the laws and regulations of importing country including matters relating to customs clearance, tariffs/duties, VAT payment and license. Further, Buyer, its directors, officers and employees shall not pay, offer, or promise to pay, or authorize the payment, directly or indirectly, of any money or anything of value to any government official or employee, for the purpose of influencing or rewarding any act or decision of such official or employee.

16. GOVERNING LAW. These Conditions of Sale, and any other instrument or agreement making up part of a Sales Agreement, shall be governed by and interpreted in accordance with the laws of the country/region of incorporation of Seller. For avoidance of doubt, in the event that the relevant Seller selling entity is incorporated in China mainland, the governing law shall be the laws of the People's Republic of China, in the event that the relevant Seller selling entity is incorporated in Hong Kong, the governing law shall be the laws of Hong Kong Special Administrative Region, and in the event that the relevant Seller selling entity is incorporated in Taiwan, the governing law shall be the laws of Taiwan. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this T/C or any Sales Agreement.

On behalf of Greater China Momentive Entities:

(Company Seal)

By: _____

Name: _____

Title: _____

Date: _____

Buyer:

(Company Seal)

By: _____

Name: _____

Title: _____

Date: _____