

Standard Terms & Conditions of Sale
Momentive Performance Materials
South Pacific

FORMATION OF CONTRACT

Unless previously agreed in writing, an order placed with any Momentive entity incorporated in the South Pacific region¹ ("MOMENTIVE") shall be deemed accepted only upon MOMENTIVE's written acceptance thereof, and the terms of that acceptance shall govern. MOMENTIVE accepts orders from, or supplies products or materials to, any buyer ("Buyer") only upon the condition that Buyer agrees to be bound by and comply with these Conditions of Sale, together with those related instruments or agreements, if any, which pertain to the same sale of materials and which have been accepted by MOMENTIVE in writing (these Conditions of Sale, alone or collectively with any such related documents, being hereinafter sometimes referred to as a "Sales Agreement"). MOMENTIVE's receipt of a purchase order or its shipment of materials to Buyer does not constitute an acceptance by MOMENTIVE of any term or condition of such purchase order or any proposed terms and conditions. ANY ATTEMPTED MODIFICATION OF THESE CONDITIONS OF SALE PROPOSED BY BUYER IN A PURCHASE ORDER CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THESE CONDITIONS OF SALE SHALL NOT BE BINDING UPON MOMENTIVE UNLESS SPECIFICALLY ACCEPTED BY MOMENTIVE IN WRITING. MOMENTIVE OBJECTS TO ANY TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THESE CONDITIONS OF SALE.

PRICES AND DELIVERY

Prices for materials shall be determined by the confirmation Buyer receives from MOMENTIVE or, in the absence of such confirmation, by MOMENTIVE'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 materials at any time or times prior to actual shipment of the materials ordered by Buyer, MOMENTIVE has the right to increase the price accordingly (including, for the avoidance of doubt, in any case where the price for the materials was determined by the confirmation Buyer receives from MOMENTIVE as aforesaid) and Buyer's orders shall consequently be re-priced to the published list price current at the time of actual shipment of the materials. Unless otherwise agreed in writing, (i) prices for materials 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. Costs of shipping by means or routes other than those selected by MOMENTIVE, shall be borne by Buyer. MOMENTIVE'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 MOMENTIVE shall separately indicate on its invoice(s) any tax required to be imposed. Buyer shall reimburse MOMENTIVE for MOMENTIVE's costs of collection should Buyer fail to pay MOMENTIVE in a timely manner, including interest at 1% per month (whether before or after judgment). Title to materials purchased hereunder, and all risk of loss or damage with respect thereto, shall pass to Buyer at the time material is transferred by MOMENTIVE to a commercial transportation carrier for shipment to Buyer. All delivery dates are approximate and may be changed at MOMENTIVE's sole discretion. If shipments are delayed by Buyer, payments shall become due on the date when MOMENTIVE 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 material. In the event of any such delay, title shall pass to Buyer and MOMENTIVE will hold material 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 MOMENTIVE's judgment, justify continuance of shipments of material under the terms of payment originally specified, MOMENTIVE 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 MOMENTIVE be liable for consequential, special, incidental or exemplary damages based on any delay in delivery or failure to deliver material.

USE AND CONSUMPTION

Unless otherwise agreed with Buyer, all products sold by MOMENTIVE are provided solely for use or consumption by Buyer of such material from MOMENTIVE, and any resale or similar transfer of such material is prohibited and shall constitute a material breach of the governing Sales Agreement.

WARRANTY

MOMENTIVE warrants that all materials sold to Buyer will be free and clear of any claim of ownership by third parties, and will conform to MOMENTIVE's internal specifications therefor in effect at the time of manufacture of the material or such other specifications as may be mutually agreed upon in writing. MOMENTIVE does not warrant the workmanship with which the materials are used or applied. Buyer shall inspect all material supplied hereunder for damage, defect or shortage promptly upon receipt, and shall provide MOMENTIVE with prompt notice of any such damage, defect or shortage. The conditions of any test of the materials for conformance with specifications shall be mutually agreed upon and MOMENTIVE shall be notified of, and may be represented at, all tests that may be made. If any material is determined not to conform to MOMENTIVE's internal specifications, or such other specifications as may be mutually agreed upon in writing, within the earlier of (i) six (6) months from date of shipment, or (ii) the "Use By" date provided by MOMENTIVE for the material, such material shall be replaced by MOMENTIVE without additional cost to Buyer, or, at MOMENTIVE's option, MOMENTIVE shall refund the purchase price therefor. This remedy is Buyer's exclusive remedy for breach of warranty. If applicable law prohibits this limitation of Buyer's remedies, then MOMENTIVE agrees that the maximum amount Buyer may claim from MOMENTIVE is twice the net purchase price Buyer actually paid MOMENTIVE for material subsequently determined to be defective. Defective materials shall not be returned by Buyer until authorized in advance by MOMENTIVE. Returned materials to the extent possible should be intact in the form shipped and retain the MOMENTIVE identity. THIS LIMITED WARRANTY IS GIVEN ONLY TO THE ORIGINAL BUYER, IT MAY NOT BE TRANSFERRED OR ASSIGNED AND DOES NOT EXTEND TO ANY SUBSEQUENT BUYER OR TRANSFEREE OF PRODUCTS. THE WARRANTY STATED HEREIN 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.

LIMITATION OF LIABILITY, REMEDY AND DAMAGES

MOMENTIVE's liability to Buyer under any Sales Agreement or arising out of Buyer's purchase, possession or use of the materials supplied hereunder or any technical advice relating thereto is limited to the warranty obligations set forth in the Warranty Article above, and in no event shall such liability, whether based in contract, warranty, negligence or other tort, strict liability or otherwise, exceed the purchase price for the material in question and, upon the expiration of the applicable warranty period specified herein, all such liability shall be deemed waived unconditionally and absolutely. The foregoing shall constitute the sole and exclusive remedy of Buyer and the sole and exclusive liability of MOMENTIVE. IN NO EVENT SHALL MOMENTIVE BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, SAVINGS OR REVENUE, LOSS OF USE OF THE MATERIAL OR ANY ASSOCIATED EQUIPMENT, COST OF ANY SUBSTITUTE FOR THE MATERIAL, DOWNTIME, CLAIMS OF THIRD PARTIES OR INJURY TO PROPERTY. THIS LIMITATION SHALL APPLY NOTWITHSTANDING A FINDING THAT ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

TECHNICAL ADVICE AND OTHER SERVICES

Buyer agrees that MOMENTIVE will not have control over the overall design, testing or labeling of any product produced using any material supplied hereunder. Buyer agrees that it is not relying upon any representation, statement or other assertion made by MOMENTIVE with respect to the suitability of the materials for any purpose, and that Buyer has made its own inquiry, testing and investigation into, and based thereon has formed an independent judgment concerning, the suitability of the materials for the use, conversion or processing intended by Buyer, and will not assert any claim against MOMENTIVE, or hold MOMENTIVE liable in any manner, with respect to any information, testing or design furnished (or failed to be furnished) by MOMENTIVE including, without limitation, technical advice or recommendations. Statements made by MOMENTIVE concerning possible or suggested articles, designs, or uses of materials are not to be construed as constituting a license under any patent covering such articles, designs, or uses, nor as a recommendation for use of such materials, articles or designs in the infringement of any patent or other intellectual property right.

PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHT

MOMENTIVE shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any material, in the form delivered by MOMENTIVE to Buyer, constitutes an infringement of any patent or other intellectual property right in the jurisdiction in which such sale occurred, if notified promptly in writing and given information and assistance (at MOMENTIVE's expense) and exclusive authority for the defense of any infringement claim and all negotiations relating to its settlement, and MOMENTIVE shall pay all damages and costs awarded therein against Buyer. In case any material in such suit or proceeding is held to constitute infringement and the use of the material is enjoined, MOMENTIVE shall at its own option and expense, either procure for Buyer the right to continue using the material, or replace same with a non-infringing material, or modify it so it becomes non-infringing, or accept return of the material from Buyer and refund the purchase price and the transportation cost thereof to Buyer. The foregoing states the entire

¹ South Pacific Region shall include Malaysia, Singapore, Thailand, Australia, Vietnam, Philippine and Indonesia.

liability of MOMENTIVE for patent infringement by the materials. MOMENTIVE shall not be responsible for, and Buyer shall hold MOMENTIVE harmless against, any expense or loss, including attorney's fees and expenses on a full indemnity basis, resulting from infringement of any intellectual property rights, including patents, trade secrets or trademarks, if such infringement arises from MOMENTIVE's compliance with Buyer's specifications or instructions.

VARIATIONS

Unless otherwise agreed in writing, any variation over or under in quantity shipped not exceeding ten (10) percent of the quantity ordered shall constitute compliance with the order and the unit price will apply to the quantity actually delivered.

ELECTRONIC COMMERCE

MOMENTIVE 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 governing Sales Agreement, and by any additional terms set out or referenced in MOMENTIVE's Internet site or electronic communications. In the event of any conflict between the governing Sales Agreement and such additional terms, the governing Sales Agreement shall prevail. Buyer may not share any password, access code or similar credential which may be issued to it by MOMENTIVE, and MOMENTIVE 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 MOMENTIVE 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 MOMENTIVE'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 MOMENTIVE for any other purpose. Buyer specifically agrees that MOMENTIVE 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.

TERMINATION FOR DEFAULT

Either party may terminate any Sales Agreement upon fourteen (14) days' prior written notice, in the event the other party breaches any material term or provision thereof, or files for bankruptcy or bankruptcy proceedings are filed against that other party, or business rehabilitation or reorganization proceedings are filed by or against that other party, or immediately where any administrator, planner, plan 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, MOMENTIVE may suspend shipments of material during such cure period without liability to Buyer or files bankruptcy or upon the occurrence of an insolvency event. MOMENTIVE may terminate a Sales Agreement with Buyer at will, with or without cause, upon not less than fourteen (14) days' notice in writing.

FORCE MAJEURE

MOMENTIVE shall not be liable if its performance of its obligations (except the obligation to pay money), in whole or in part, under any Sales Agreement becomes impossible or commercially unreasonable resulting from an act of God, act of the other party, labor disruption, civil disturbance, strike, epidemic or other widespread health risk, fire, flood, war, terrorist threat or activity, release of dangerous or hazardous materials, government regulation, equipment failure, any delay in or inability to obtain utilities, transportation, labor, machinery, material, products or services through its usual and regular sources or any other condition or cause beyond its reasonable control, any such cause being hereafter referred to as "**Force Majeure**", and the quantities of material affected by Force Majeure shall be deleted from the quantities to be supplied under such Sales Agreement. In the event the Force Majeure condition is not alleviated within sixty (60) days after beginning to have an adverse effect on performance hereunder, then MOMENTIVE may, at its option, terminate the affected Sales Agreement upon written notice to Buyer, such termination to be without further liability to either party. If, for any reason, supplies of the materials deliverable hereunder or feedstock from which such materials are derived from any of MOMENTIVE's sources are curtailed or cut off or are inadequate to meet MOMENTIVE's own requirements and its obligations to its customers, MOMENTIVE's obligation hereunder shall be reduced to the extent necessary in MOMENTIVE's reasonable judgment to apportion fairly among MOMENTIVE's own requirements and its regular customers such materials as can be made available in the ordinary and usual course of MOMENTIVE's business from any such sources of supply.

PRODUCT WARNINGS AND INSTRUCTIONS

MOMENTIVE agrees to furnish Buyer with Material Safety Data Sheets ("**MSDS**") for the materials supplied hereunder where applicable. The materials

may be, or become, considered hazardous materials or hazardous substances under various laws and regulations when handled or processed. Buyer agrees to familiarize itself (without further reliance on MOMENTIVE) with any hazards of the materials, their processing and applications and the containers in which the materials are shipped. Buyer agrees to provide the MSDS to all those required by law to receive the same and to inform and train its employees, and properly warn and instruct its customers, as to hazards identified in the MSDS or discovered by Buyer in its investigations. Buyer further agrees to properly manage and dispose of all wastes and residues resulting from its use of the materials in accordance with applicable laws and regulations. Buyer shall indemnify MOMENTIVE from and against all claims, damages, liabilities and expenses (including attorneys' fees and expenses on a full indemnity basis) arising from Buyer's breach of the foregoing obligations.

SECURITY AND TITLE

MOMENTIVE shall retain a purchase money security interest in the materials sold hereunder until all payments therefor (including deferred payments, whether evidenced by notes or otherwise) shall have been received in full by MOMENTIVE and, if requested in writing to do so, Buyer agrees to do all acts necessary to perfect and maintain such security interest in MOMENTIVE.

GOVERNMENT PROCUREMENT REQUIREMENTS

Buyer acknowledges that materials supplied by MOMENTIVE may not meet applicable government procurement requirements and that MOMENTIVE may not be able to supply information required by government procurement regulations. Except to the extent that MOMENTIVE has expressly agreed in writing with Buyer that its materials shall meet specified government procurement requirements or that MOMENTIVE will provide Buyer with specified information under government procurement regulations, MOMENTIVE shall have no liability whatsoever with respect to any requirements related to or arising from government procurement regulations.

INTERNATIONAL TRADE

Buyer shall ensure that products, technology or software Buyer receives from MOMENTIVE are exported by Buyer only in compliance with applicable laws, including (without limitation) export control laws and regulations of U.S. and the country of incorporation of MOMENTIVE. 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.

MEDICAL APPLICATION

Buyer understands that MOMENTIVE's materials 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 MOMENTIVE's materials for any such application, or for any other application into which, to Buyer's knowledge, MOMENTIVE has previously declined to sell material.

GENERAL

Cancellation of any order, or return of any conforming material purchased hereunder, will be subject to acceptance by MOMENTIVE and to a restocking charge in accordance with MOMENTIVE's policy as then in effect. MOMENTIVE reserves the right without further obligation or liability to Buyer to discontinue the manufacture and sale of any product upon either (i) thirty (30) days' notice to Buyer or (ii) if required by law, immediately upon notice to Buyer. These Conditions of Sale, together with the other documents, if any, comprising part of the same Sales Agreement, contain the entire agreement among the parties as to the subject matter thereof, and supersede all prior understandings, whether written or oral, relating thereto. No Sales Agreement may be amended, renewed, extended or modified in any manner, except by an instrument in writing signed by the parties. Neither course of performance, nor course of dealing, nor usage of trade shall be used to qualify, explain or supplement any of the terms of any Sales Agreement. Failure by either party, at any time or from time to time, to require the performance by the other of any term or provision of any Sales Agreement shall not constitute a waiver of such term or provision, or affect or impair such Sales Agreement in any way. Each provision of any Sales Agreement shall apply to the full extent permitted by law, and the invalidity in whole or in part of any provision shall not affect the remainder of such provision or any other provision, each of which shall be enforced to the full extent permitted by law. The rights and obligations of Buyer under any Sales Agreement may not be assigned or delegated, in whole or in part, without MOMENTIVE's prior written consent. 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 Singapore. A person who is not a party to the sales agreement between Buyer and MOMENTIVE has no rights under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore to enforce any term hereof. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Conditions of Sale or any Sales Agreement.