

## TERMS AND CONDITIONS 条款及条件

*The Terms and Conditions herein apply to the sale of HEXPOL Compounding products.*

*该各项条款及条件仅适用于海克斯波聚合材料产品销售*

1. **Limited Warranty.** Subject to paragraph 2, and unless otherwise expressly provided herein, Seller warrants good and free title and that Product will conform to Seller's published specifications, if any, or those other quality standards and/or measurements set forth herein. Seller has based any recommendations to Buyer for the use of the Product upon information considered reliable by Seller, but Seller makes no warranty of the results Buyer might obtain in any particular application of Product. Subject to the foregoing, and except as otherwise expressly provided herein, **SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO PRODUCT, EXPRESS OR IMPLIED, RESPECTING MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER MAKES NO WARRANTIES EXTENDING BEYOND THE DESCRIPTION OF THE PRODUCT, WHETHER USED ALONE OR IN COMBINATION WITH ANY OTHER SUBSTANCE OR IN ANY PROCESS.** These warranties extend only to Buyer.

有限保证。除第 2 段及除非另有明确规定，卖方可以保证产品的有效产权，并符合产品发布规格，或那些按本协议规定的质量和/或测量标准。若认定为可靠信息，卖方会以任何建议给买方使用产品，但卖方不能保证买方在任何特定应用程序下的产品使用结果。除上述情况，及除另有明确说明，卖方针对产品任何特定用途的适销性和适用性，没有任何表示或担保，明示或暗示。卖方不做任何超越产品说明的保证，无论是单独使用或与其它物质或过程联合。该保证条款仅延伸至买方。

2. **Limitation of Liability.** Buyer will examine Product promptly after receipt for damage, defects, short-weight and non-conformance. Buyer must give Seller written notice of the existence of each claim involving Product (whether based in contract, breach of warranty, negligence, strict liability, other tort or otherwise) within thirty (30) days [except ten (10) days in the case of thermosetting elastomer Products-unless a shorter shelf life is noted on the label] after receipt of the quantity of Product forming the basis for the claim; provided that for those claims not reasonably discoverable within such 30-day period [10-day period for thermosetting elastomers] (including those discoverable only in processing, further manufacture, other use, or resale), Buyer must give such notice within thirty (30) days [ten (10) days in the case of thermosetting elastomer Products] after Buyer first learns of facts reasonably giving rise to such claim, but not later than one hundred eighty (180) days of receipt of the Product involved in the claim; a failure by Buyer to give such written notice within the applicable time constraint will constitute an absolute and unconditional waiver of all such claims irrespective of whether Buyer has discovered the facts giving rise to such claim, or whether further processing, manufacture, other use or resale of such Product has actually occurred. Buyer assumes all risk of patent infringement by reason of any use Buyer makes of the Product in combination with other substances or in the operation of any process.

限制责任。买方收到货后要及时检验产品是否损伤，缺陷，短重和不合格。买方收到产品后，若产生投诉，买方必须 30 天之内给卖方书面通知（无论是基于违反合同，保修，疏忽，严格责任，其他侵权行为或以其他方式）[若是热固性弹性体期限为 10 天，除非产品标签上标明保质期较短]；倘若 30 天内不能发现该投诉问题（热塑性弹性体索赔期限为 10 天）（包括那些在加工过程，再加工，其它应用或转售过程中的发现），买方必须在获得充分索赔证据之后，30 天内给予通知（热塑性弹性体 10 天）但从收到货物起，不得迟于一百八十（180）天；倘若由于买方没有在规定期限内给予书面通知，那么将绝对无条件的豁免所有此类索赔，不论买方是否已发现索赔事实，或此类产品是否进一步加工，制造，其他使用或转售。由于买方原因使产品与其它物质结合或在任何过程中结合而形成另一种产物，买方承担所有专利侵权的风险。

**SELLER'S LIABILITY TO BUYER FOR DAMAGES, WHETHER UNDER BREACH OF WARRANTY OR ANY OTHER CAUSE WHATSOEVER, AND WHETHER UNDER THIS CONTRACT OR OTHERWISE, SHALL IN NO EVENT EXCEED THAT PART OF THE PURCHASE PRICE APPLICABLE TO THE PORTION OF PRODUCT GIVING RISE TO BUYER'S CLAIM FOR SUCH**



**DAMAGES. IN NO EVENT WILL SELLER HAVE LIABILITY TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES.**

无论是由于违背担保协议或任何其它原因而造成的处罚，卖方对于买方的赔偿责任，无论根据本合同或以其他方式，任何情况下不得超过产品的购买价格部分。卖方不负责买方任何意外的，继发或特殊情况下的损害。

3. **Ordering & Limits.** Seller reserves a right to discontinue any Product sold hereunder at any time, unless Buyer and Seller are bound by a pre-existing master agreement which would prohibit such discontinuance.

订购与限制。卖方有权随时中止出售任何产品，除非买方和卖方预先存在协议，将防止此类约定随意中止。

4. **Credit.** Unless otherwise directed or agreed to by Seller, Buyer will make all payments hereunder in cash, or in negotiable paper collectible at face value in United States funds at the location indicated on Seller's invoice. If Seller determines that the financial responsibility of Buyer has become impaired or otherwise unsatisfactory to Seller, Seller may require advance cash payments or the posting of satisfactory security by Buyer, and may withhold shipments until Buyer makes such cash payments or posts such security; such action by Seller shall not constitute a change of payment terms hereunder.

信贷。除非另有指示或卖方同意，买方将用现金付款，或以卖方发票显示的转让票据方式按照美国基金票面价值回收。如果卖方确定买方财政状况削弱或不理想，卖方可要求预付款或买方给予令人满意的保证，卖方可以拒绝出货，直到买方支付现款或给予安全保证；卖方该行为不构成以下付款条款的变更。

5. **Governmental Constraints.** If a present or future law, governmental decree, order, regulation, or ruling under any existing or future legislation prevents Seller from increasing or revising the price as provided herein, or nullifies or reduces any price or price increase hereunder, upon written notice from one to the other Seller and Buyer will attempt to identify mutually agreeable changes to conform this contract with such law, decree, order, regulation, or ruling. If the parties cannot agree upon and implement such changes within sixty (60) days after such notice, Seller shall thereupon have a right to terminate this contract forthwith by written notice to Buyer.

政府约束。如果当前或将来的法律，政府法令，命令，规章，或根据现有或未来立法的裁决防止卖方增加或修改此处提供的价格，取消或降低价格，或提高价格，卖方必须书面通知另一方，针对任何变更，卖方和买方将尽力达成一致意见，以确保该合同符合法律，法令，命令，规章，或裁决。收到变更通知后，如果双方 60 天内不能达成一致意见，卖方在向买方发出书面通知后，有权立即终止本合同。

6. **Price & Terms Adjustment.** Seller may change any price, freight term and/or term of payment by giving Buyer prior written or electronic (via e-mail) notice.

价格与条款的调整。若事先书面或电子邮件通知买方，卖方可更改价格，运费和/或付款期限（通过 e - mail）。

7. **Taxes.** Buyer will reimburse Seller for all federal, state, local or other taxes (other than income taxes), excises or charges, including superfund taxes and fees, which Seller is required to pay in connection with the manufacture and supply of Product hereunder, but only to the extent not already included in the price specified herein.

税款。买方将所有联邦，州，地方税或其他税（所得税除外）偿还给卖方，消费税或费用，包括超级资金税费，卖方生产和供应如下产品需要支付的费用，但尚未包括在此处指定的价格范围。

8. **Title & Risk of Loss.** Title and risk of loss to the Product shall pass to Buyer at Seller's point of shipment. Buyer assumes all risks and liabilities arising out of unloading, discharge, storage, handling and use of the Product, or arising out of compliance or non-compliance with federal, state, municipal or local laws and regulations governing or controlling such activity, except to the extent, if any, attributable to Seller's gross negligence or willful misconduct. Seller has no liability for the failure of discharge or unloading equipment or materials used by Buyer, whether or not supplied by Seller. Except to the extent attributable to the Product sold hereunder failing to meet the express warranties set forth in paragraph 1, Buyer will indemnify, defend and hold Seller

harmless from all costs, expenses, damages, judgments or other loss, including costs of investigation, litigation and reasonable attorneys' fees, arising out of Buyer's selection, use, sale and further processing of the Product sold hereunder.

所有权及损失风险。所有权及损失风险，应当在卖方发货地点就转向买方。买方承担所有卸货，存储，搬运和使用过程中产生的风险和责任，或由于遵守、不遵守联邦，州，市或地方法律，法规，管制等所产生的责任风险，除了上述范围，如果还有其他风险的话，归咎于卖方的重大过失或不当行为。由于买方设备或材料原因导致卸货失误，卖方不承担任何责任，不论是否由卖方提供。除了所卖产品不符合第 1 段规定的担保范围，买方将赔偿，防护保持卖方不受所有成本，费用，损失，判决或其他损失危害，包括因买方的选择，使用，销售和产品深加工而产生的调查费，诉讼赔偿，合理的律师费。

9. Force Majeure. Either party may suspend performance hereunder (except to pay for Product already received) in the event of: (1) acts of God, fire, explosion, flood, hurricanes; (2) strikes, lockouts or other industrial disturbances or riots; (3) war, declared or undeclared; (4) compliance with any Federal, state, provincial, municipal or military law, regulation, order, or rule, foreign or domestic, including priority, rationing, allocation or preemption orders or regulations, or cancellation of Seller's or Buyer's license to operate its plant; (5) shortage or other failure of facilities used for manufacture or transportation, shortage of labor, power, fuel or raw materials; (6) total or partial shutdown due to Seller's normal plant turnaround; or (7) any other cause or causes of any kind or character reasonably outside the control of the party failing to perform, whether similar or dissimilar from the enumerated causes (a "force majeure"). In the event a force majeure renders a party unable to perform its obligations under this contract, such party shall give written notice to the other party, with the full particulars including the expected duration of such force majeure, not later than 72 hours after the occurrence of the cause relied on, and upon the giving of such notice such party may suspend its obligations hereunder to the extent affected by such force majeure for the duration of the force majeure, but no longer. Upon cessation of the force majeure, performance shall resume, but such delay shall not, except by mutual agreement, operate to extend the term of this contract or obligate the Seller to make up deliveries or Buyer to purchase quantities so missed. The settlement of strikes or lockouts involving the parties hereto shall lie entirely within the discretion of the party having the difficulty, and the above requirements for remedy of any force majeure with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the employees involved, when deemed inadvisable by the party having the labor difficulty.

不可抗力。发生下列情况时，任何一方均可暂停履行义务（支付已收到产品货款除外）：（1）天灾，火灾，爆炸，洪水，飓风；（2）罢工，停工或其他工业骚乱或暴乱；（3）宣布或未经宣布的战争，（4）遵守任何联邦，州，省，市或军事法律，规例，命令，或规则，无论是国外还是国内，包括优先配给，分配或抢占订单或法规，或取消卖方的或买方的许可经营其厂房；（5）用于制造或运输设备的短缺或其他故障，劳动力，电力，燃料或原料材料短缺；（6）由于卖方的正常厂房周转导致部分或全部关闭；或（7）任何其他原因或任何形式或性质以外的原因导致一方不履行职责的，不论所列举原因是否类似或不同（“不可抗力”）。一旦发生不可抗力致使一方不能履行本合同项下的义务，该当事方应以书面通知对方，告知全部详情，包括不可抗力预计的持续时间，发生后不得迟于 72 小时，并告知该方可能会暂停所有受到不可抗力影响的义务，但不会超出不可抗力影响时间。不可抗力停止后，应立即履行职责，但这种拖延，除经双方同意，不得作为本合同的期限延长或责成卖方补货或买方补购不足的数量。涉及各方罢工或停工的解决应完全取决于内有困难的当事人的裁量，以及上述所有合理调度的不可抗力补救要求，在劳动难度认为不宜的一方，经所涉及到的员工同意，不得作为解决罢工或闭厂要求。

10. Safety & Health Indemnity. Buyer acknowledges that Seller has furnished to Buyer Material Safety Data sheets, which include warnings together with safety and health information concerning the Product and/or the containers for such Product. Buyer will disseminate such information so as to give warning of possible hazards to persons whom Buyer can reasonably foresee may receive exposure to such hazards, including, but not limited to, Buyer's employees, agents, contractors and customers. If Buyer fails to disseminate such warnings and information, Buyer will indemnify, defend and save Seller harmless against any and all liability arising out of or in any way

connected with such failure, including without limitation, liability for injury, sickness, death and property damage.

安全及健康赔偿。 买方接收卖方提供给买方材料安全数据表，其中包括有关产品和/或容器等方面的安全和健康警告。买方将传播这些信息，以便给可能会遇到危险的买家以警告，他们可以合理预见可能会接触到的危害，包括但不限于买方的员工，代理商，承包商和客户。如果买方未能传播这样的警告和信息，买方将赔偿，维护和保全卖方对任何和所有此类故障引起的一切责任，包括但不限于伤害，疾病，死亡和财产损失的赔偿责任。

11. Shortage of Product. Unless otherwise prescribed under a pre-existing master agreement then in effect between Buyer and Seller, during periods when demand for Product exceeds Seller's available supply, whether due to a force majeure or otherwise, Seller may distribute Product among itself for its own manufacturing uses, its customers, and Buyer in such manner as Seller in its sole discretion deems practicable. Buyer will accept, as full and complete performance by Seller, deliveries in accordance with such determinations as Seller may make. Except in the case of a force majeure, if not satisfied with Seller's determination, Buyer shall have a right to terminate this contract upon: (i) 10 days written notice; and (ii) payment for all Product received to date, without further obligation. In the event of a force majeure, Seller has no obligation to purchase material from third parties for resale to Buyer, nor will Seller bear liability for any cost increases suffered by Buyer in purchasing substitute material from a third party.

产品短缺。 除非另有早已存在协议规定，然后在买方和卖方协议生效期间，当产品需求超过卖方供应能力时，或由于不可抗力或由于其他原因，卖方可能会分发产品供其自身的生产使用，其客户，作为买方的买家将自行决定其认为切实可行的方式。买方将接受履行卖方的全面职责，依照卖方可能做出的裁决，进行交货。除不可抗力的情况下，如果卖方感到不满意，买方将有权终止本合同：根据（一）10 天内书面通知；和（二）偿付所有产品的到期货款，无其它义务。若发生不可抗力，卖方没有义务从第三方购买材料转售给买方，卖方也不承担买方从第三方购买替代材料所产生的任何成本增加的责任。

12. Assignment/Delegation. Buyer may assign/transfer rights and/or delegate duties/obligations hereunder only with the prior written consent of Seller, not unreasonably withheld.

转让/委派。 若事先得到卖方书面同意，买方有权分转让和/或分配责任/义务，不得无故保留。

13. Integration. These Terms and Conditions apply to all sales by HEXPOL Compounding and its affiliated companies. Except in the case of a pre-existing master agreement in effect between Buyer and Seller, no statement of agreement, oral or written, made before or at the signing of this contract shall vary or modify the written terms hereof, and neither party shall claim any amendment, modification or release from any provision hereof unless such change occurs in a writing signed by the other party and specifically identifying it as an amendment to this contract. No modification or addition to this contract shall occur by the acknowledgment or acceptance by Seller of a purchase order, acknowledgment, release or other form submitted by Buyer containing additional or different terms or conditions, and Seller hereby gives Buyer notice of the rejection of such additional terms and conditions.

整合。 这些条款和条件适用于所有海克斯波聚合材料及其附属公司的销售。除了买方和卖方之间预先存在的协议，若没有协议声明，无论口头或书面的，需在本合同签订之前更改或修改其书面条款，否则任何一方均不得要求修订，修改或公布任何条款，除非对方签署书面文件，并专门确定作为本合同的修订。任何修改或增补本合同都要通过承认书或接受采购订单确认，买方承认，发布或其他形式含有附加或不同的条款，卖方给买方拒绝这种额外条款的通知。

14. Waiver. The failure of seller to insist, in any one or more instances upon the performance of any of the terms, covenants or conditions of this contract or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants or conditions or the future exercise of such right, but the obligation of buyer with respect to such future performance shall continue in full force and effect.

弃权。 在任何一个或多个案例中，卖方未能持续履行本合同的任一条款，契诺或条件，或不能行使任何下列权利，不能释为弃权或放弃未来履行此类条款，契诺或条件的权利，但买方与之相应的的义务，也应随即完全生效。



15. Severability. The provisions of this contract are severable. If any provision of this contract is held to be unenforceable, then such provision will be stricken from this contract and the remainder of this contract will remain in full force and effect.

可分割性。本合同条款是可分割的。如果本合同的任何条款被认定为不可执行，则该条款将从本合同中扣除，该合同的其余部分将继续生效。

16. Governing law. This contract shall be governed, interpreted and construed by, and in accordance with, the laws of the State of Ohio, including the provisions of the Ohio Uniform Commercial Code, without regard to principles of conflict of laws. Buyer agrees to submit to the jurisdiction of any court wherein an action is commenced against Seller based on a claim for which Buyer has agreed to indemnify Seller under this agreement. Any litigation commenced by Buyer arising out of goods sold by Seller shall be commenced, litigated, and adjudicated exclusively in the state and/or federal court located in Cuyahoga County, Ohio and each party consents to such jurisdiction.

法律依据。本合同由或根据俄亥俄州的法律说明和解释，包括俄亥俄州统一商法典的规定，而不考虑法律冲突的原则。买方需服从任何法院的管辖权限，其中一个行为是在卖方的基础上，买方同意卖方根据本协议提出的索赔。买方提出的任何关于卖方出售商品的诉讼都应在位于俄亥俄州的 Cuyahoga，权限由各党赞成通过的国家和/或联邦法院立案，起诉，和裁决。

i. Updated: August, 2011  
更新于 2011 年 8 月