

TERMS AND CONDITIONS

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

- 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.
- 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. **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.**
- 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.
- 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.
- 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.
- 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.
- 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Updated: August 2011