

FORMOSA PLASTICS CORPORATION, U.S.A. GENERAL CONDITIONS

- (1) **ENTIRE AGREEMENT:** This Agreement contains all the terms and conditions of sale and purchase of the material named herein and constitutes the complete understanding of the parties with respect thereto. No modification, extension or release from any provision hereof shall be effected by mutual agreement, acknowledgment, acceptance of purchase order or shipping instruction forms, or otherwise, unless the same shall be approved in writing, signed by the authorized individual of the party to be bound, and specifically described as an amendment to or extension of this Sales Contract.
- No waiver by either Seller or Buyer with respect to any breach or default or of any remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be approved and expressed in writing signed by the authorized corporate officer of the party to be bound.
- (2) **GOVERNING LAW:** THE PARTIES HERETO AGREE THAT ALL OF THE PROVISIONS OF THIS CONTRACT AND ANY QUESTIONS CONCERNING ITS INTERPRETATION AND ENFORCEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY, U.S.A. and the execution and delivery of this Sale Contract shall be deemed to be the transaction of business within the State. The parties agree that any dispute arising out of this Sales Contract, if not confined to arbitration by Paragraph 11 of these General Conditions, shall be brought only in the federal or state courts in the State of New Jersey and both parties consent to the jurisdiction of said courts and expressly waive the defense of an inconvenient forum to the maintenance of any such proceeding.
- Neither this Agreement nor any interest therein may be transferred or assigned by Buyer except upon the prior written consent of Seller.
- (3) **BUYER'S CREDIT:** Seller reserves the right, among other remedies, either to terminate this Agreement or to suspend further deliveries under it in the event Buyer fails to pay for any one shipment when same becomes due and payable according to the terms set forth herein. Should Buyer's financial responsibility or status become unsatisfactory to Seller, cash payments or satisfactory security may be required by Seller for further deliveries and for goods theretofore delivered. The suspended quantity, at Seller's option, may be eliminated from this Agreement without liability. Notwithstanding anything contained herein to the contrary, in the event Seller is required to institute proceedings to collect any sum due and owing from Buyer hereunder, Buyer expressly agrees to be responsible for the payment of any and all counsel fees and costs which Seller may reasonably incur in connection with the institution and prosecution of such proceedings.
- (4) **EXCUSE OF PERFORMANCE:** Neither party shall be subject to any liability for delay in performance, or nonperformance, as a result of fire, flood, natural catastrophe, strike, labor trouble, scheduled annual turnaround, patent, accident, riot, act of governmental authority or compliance with government request, act of God or other contingencies and circumstances beyond its reasonable control interfering with the production, supply, transportation, or consumption of the material covered by this Agreement or with the supply of any raw materials (including energy sources) used in connection therewith, or the inability of Seller to purchase raw materials at a commercially reasonable price, or in the event Seller, in its reasonable discretion elects to cease or suspend the operation of any facility where it is producing any quantity of materials delivered hereunder. Quantities so affected may be eliminated from the Agreement without liability, but the Agreement shall otherwise remain unaffected. Seller may, during any period of shortage due to any cause, prorate and allocate its supply of such materials among itself for its own consumption and/or the consumption of its affiliated companies, its contract customers and its regular customers not then under contract, in such manner as may be deemed reasonable by Seller. In no event shall Seller be obligated to purchase any materials in the marketplace to satisfy its obligations hereunder.
- (5) **LIMITED WARRANTY:** Subject to the limitation of No. 7 hereunder, Seller warrants title and that all materials sold hereunder shall conform to Seller's standard specifications. SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE MATERIALS, whether used alone or in combination with other substances. Any suggestions made by Seller concerning uses or applications of said materials reflect Seller's opinion only and Seller makes no warranty of results to be obtained.
- (6) **COMPLIANCE WITH LABOR LAWS:** In producing product sold hereunder Seller shall comply with the Fair Labor Standard Act of 1938, as amended; provision of Executive Order 11246, as amended; ADEA of 1967, as amended; Vocational Rehabilitation Act of 1970; Vietnam Era Veterans Act and Equal Pay Act, as amended.
- (7) **LIMITATIONS OF LIABILITY:** Within fifteen days after receipt of each shipment of material sold hereunder, Buyer shall examine such material for any damage, defects or shortage. All claims, including for alleged damaged or defective goods, shortage or non-deliverance of goods, negligence or any other cause whatsoever, shall be deemed waived unless made in writing and received by Seller within fifteen (15) days after Buyer's receipt of the goods. Failure of Buyer to give notice of any claim within such time period shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claim shall have been discovered or whether processing, use or resale of the material shall have taken place. SELLER'S LIABILITY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING ALLEGED NEGLIGENCE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE MATERIAL IN RESPECT TO WHICH THE CLAIM IS MADE, OR AT THE ELECTION OF SELLER, THE REPAIR OR REPLACEMENT OF SUCH MATERIAL. Seller shall not be liable for, and Buyer assumes responsibility for, all personal injury and property damage resulting from the handling, possession, use or resale of the material. In no event shall Seller be liable for special, incidental or consequential damages, whether Buyer's claim is in contract, tort, strict liability or otherwise. Transportation charges for the return of material which is the subject of this article 7 shall not be paid by Seller unless authorized in advance by Seller.
- (8) **ADJUSTMENT TO PRICE AND TERMS:** At any time during the term of the Agreement, Seller may, upon written notice to Buyer, change the price, transportation or payment terms specified herein, effective on the date set forth in such notice. Seller's price and the terms of delivery as in effect on date of shipment shall govern. Buyer's failure to make written objection to any such change within five (5) days of notice of such change shall constitute the acceptance of the new price, transportation or payment terms. Seller reserves the right to terminate this Agreement on thirty (30) days written notice if any governmental authority in any way restricts or limits the right of Seller to increase its prices or to continue any price already in effect.
- (9) **UNLOADING AND DEMURRAGE:** Seller's delivery equipment, if furnished hereunder, is with the understanding that Buyer will use all reasonable effort to promptly unload and return Seller's returnable containers in good condition (F.O.B. Seller's shipping point unless otherwise specified) to delivering carrier (in railcar, constructive placement for delivery/switching) within the tariff or contracted period free of demurrage (in railcar, seven (7) free days) or extra detention charges. All applicable demurrage or extra detention charges (in railcar, fifty dollars per day) on such equipment shall be for Buyer's account. Buyer is responsible to inspect railcars for visual defects caused by railroad carrier. Buyer shall notify Seller of any defect found, including open hatches and bottom unloading gates, within 24 hours of receipt at Buyer's point of delivery. Buyer shall not assign, re-route, direct or reconsign any railcar except with prior written consent of the Seller.
- (10) **PAYMENT:** All sums shall be payable in legal tender of the U.S.A. Acceptance by Seller of bank draft, checks or other media of payment is subject to its Credit Department's discretion. Seller may recover for each delivery as a separate transaction. Seller may at any time, upon giving notice to Buyer, decline to make delivery except for cash.
- (11) **ARBITRATION:** Any dispute or controversy arising out of this Agreement shall be referred to and determined by a sole arbitrator, except that if one or both of the parties oppose the final selection of the sole arbitrator, either party may require that there be a panel of three (3) arbitrators and the American Arbitration Association shall comply with such requirement. Within 45 days of written demand for arbitration, the arbitrator(s) shall be selected by the American Arbitration Association pursuant to the then current rules of that Association. The arbitrator(s) shall decide what proportion of all arbitration-related expenses shall be paid by each party. All arbitration proceedings shall be conducted in the State of New Jersey. The substantive laws to be applied by the arbitrator in reaching a decision shall be the laws of the State of New Jersey. The arbitration procedure to be followed shall be determined by the arbitrator(s) with the objective to keep the arbitration costs to the parties as minimal as possible while still allowing for a fair decision to be reached. In event of a default by any party in respect to any procedural order made by the arbitrator(s), the arbitrator(s) shall have the power to proceed with the arbitration and to deliver his (their) decision and award. The duty to arbitrate shall survive the cancellation or termination of this Agreement. The arbitrator(s) shall provide the parties with a concise written explanation of the reasoning behind the decision and award. The arbitrator(s)'s decision and award shall be final and legally binding on all parties.
- (12) **SEVERABILITY AND WAIVER:** Every provision in this Agreement is intended to be severable such that if any term or provision hereof is illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement. A waiver of any breach or default under this Agreement must be in writing and shall not constitute a waiver of any other or subsequent breach or default of the same or any other provision hereof.

NOTICE TO BUYER:

Claims for freight allowance must be accompanied by original receipted freight voucher. Before accepting goods from the transportation company, you must see that you get each article, but if shipment is short or damaged, you must refuse the goods until receiving an adjusted freight receipt, which you must require from the transportation company. On carload shipments you must take full car seal records and note whether seals are intact.

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