

Zschimmer & Schwarz Interpolymer Inc. – Terms and Conditions of Sale

1. ACCEPTANCE

Zschimmer & Schwarz Interpolymer Inc.'s (herein after referred to as Zschimmer & Schwarz or Seller) acceptance of Buyer's order is expressly made conditional on Buyer's assent to the terms and conditions set forth herein, notwithstanding the provisions contained in any purchase order, acknowledgement, acceptance or other document of Buyer. Each delivery of products will be deemed to be solely upon the terms and conditions set forth herein, provided however, that if any of the provisions hereof conflict with the provisions of a separate written agreement between Buyer and Zschimmer & Schwarz covering the sale of products delivered hereunder, then the provisions of such other written agreement shall prevail. If there is no such existing written contract, Zschimmer & Schwarz does not accept any terms and conditions other than those expressly set forth herein, and Zschimmer & Schwarz hereby offers to sell the products to Buyer only upon the following terms and conditions; and acceptance of such products by Buyer shall constitute assent to said terms and conditions.

2. OFFER AND ACCEPTANCE

Unless otherwise stated by Seller, all offers are valid for thirty (30) days, from the date of such offers. Seller shall not be bound to any contract of delivery, unless a written order confirmation has been issued by Seller.

3. TECHNICAL INFORMATION, INTELLECTUAL PROPERTY RIGHTS

Data, formulations, measures, weights, prices and other information being part of Seller's catalogues, brochures, advertisements, circulars, data sheets and price lists are an invitation to treat as information only and shall not constitute an offer by Seller. Only such specifications, formulations, measures, weights, prices and other information that are expressly specified in the final contract between Seller and Buyer may be relied upon by Buyer. Inclusive of what is specifically set forth in this clause below, if goods delivered by Seller to Buyer constitute an infringement of a third party's patent right, industrial design or any other intellectual property right, Seller undertakes to take repossession of the goods and repay the original purchase price, but shall not be obliged to pay to Buyer any damage or any other sum whatsoever resulting from such infringement. Notwithstanding the foregoing, if the goods were sold for a particular purpose recommended by Seller, as expressly set forth and identified in the contractual documents, Seller shall in addition to what is set forth above in this clause reimburse Buyer for reasonable direct costs incurred by Buyer due to such infringement. If any action is brought against Seller for infringement of any patent right, industrial design or similar intellectual property right arising out of Seller's production of goods based on express or implied instructions or specifications by Buyer, it is the obligation of Buyer to indemnify and hold Seller harmless against all damage claims, liabilities and demands resulting from such action, including reasonable legal costs.

4. DELIVERY

Unless otherwise agreed in writing by Seller, delivery is made FOB Seller's plants or warehouses (determined in accordance with the INCOTERMS in force at the date of the contract). If delivery cannot take place within the agreed time of delivery, Seller shall have the right to extend the agreed upon time of delivery with the time required. Should the extension of the time of delivery extend six (6) weeks, Buyer is entitled to cancel the contract, provided that the cancellation is made in writing within one (1) day from the date that the Buyer has been notified of the new time of delivery, save for when the delayed delivery is due to force majeure. Should Buyer not cancel the contract within such time, the time of delivery stated by Seller shall be considered as the new time of delivery. Cancellation of contract shall be Buyer's sole remedy at delay its delivery and Buyer shall not be entitled to damages, penalty, remuneration or other compensation, unless a separate written agreement has been entered into between Seller and Buyer to the effect. Under no circumstances shall Buyer be entitled to compensation for any indirect or consequential damages, costs or losses due to any delay in delivery.

5. CANCELLATION/ CHANGE ORDER REQUEST

No Purchase Order or Contract can be modified or cancelled by Buyer without the written consent of Seller and in no event shall any Purchase Order or Contract be modified or cancelled for any portion thereof already processed, manufactured, or in process of manufacture, processing or performance, at the time the request for modification or cancellation is received by Seller, except upon terms, satisfactory to Seller, which protect and indemnify Seller against all loss. If Seller permits Buyer to cancel any Purchase Order or Contract, in whole or in part, Seller may charge Buyer a cancellation charge of twenty percent (20%) of what the total price of the respective Purchase Order or Contract (or, if applicable, the portion cancelled) would have been if invoiced as of the date of cancellation.

6. PRICES

Should, after entering into any contract for the sale of goods, changes in the exchange rates, taxes, duties or other governmental charges as well as any material and unforeseen costs for raw material, transportation or wages occur, which affect Seller's costs for providing the goods, Seller shall have the right to change the price accordingly. Unless otherwise specified by Seller, all amounts of money referred to in the contract shall be interpreted as being amounts exclusive of sales tax, any similar value added tax or any tax that replaces such sales tax or any type of charges. Prices are effective the day of shipping and invoicing and may be altered from the price quoted on the order acceptance.

7. PAYMENT

Buyer will pay for all products on the terms described on the invoice. Zschimmer & Schwarz, or its assignee, may charge the maximum interest allowed by law on all overdue amounts. If payments are not made on time, or if Zschimmer & Schwarz has reason to believe that Buyer's financial stability is unsatisfactory, Zschimmer & Schwarz may defer shipments, accelerate due dates on all amounts owed, require cash and other security, and exercise any of Zschimmer & Schwarz's rights under the Uniform Commercial Code. Buyer shall pay all of Zschimmer & Schwarz's collection costs, including, but not limited to, attorneys' fees. Buyer will pay all taxes, duties, excises and/or other charges (except taxes on or measured by net income) that are increased or levied, now or in the future, in connection with the manufacture, sale, transportation or disposal of any products delivered hereunder.

8. WARRANTY

Zschimmer & Schwarz warrants that at the time of delivery of the products that (i) the products will meet all of Zschimmer & Schwarz's written specifications for the products in all material respects, and (ii) upon payment of the purchase price Buyer will receive good title to the products free and clear of all liens and encumbrances. Except for the foregoing warranties, ZSCHIMMER & SCHWARZ MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED. ZSCHIMMER & SCHWARZ EXPRESSLY DISCLAIMS AND BUYER EXPRESSLY WAIVES ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE, REGARDLESS OF WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ALLEGEDLY ARISING FROM ANY USAGE OF ANY TRADE OR FROM ANY COURSE OF DEALING. ANY APPLICATION INFORMATION OR ASSISTANCE THAT ZSCHIMMER & SCHWARZ MAY FURNISH TO BUYER IS COMPLIMENTARY AND SHALL IN NO WAY BE DEEMED PART OF THE SALE OF PRODUCTS HEREUNDER OR A WARRANTY OF RESULTS OBTAINED THROUGH THE USE OF SUCH PRODUCTS. THE PRODUCT SPECIFICATION IS INTENDED AS A GUIDE FOR USE BY BUYER AT THEIR OWN DISCRETION AND RISK.

9. INSPECTION AND LIMITATION ON LIABILITY

Buyer will examine the products delivered promptly upon receipt of each shipment and notify Zschimmer & Schwarz of any off-specification goods, shortfall in delivery or non-receipt of goods. Claims for shortages of less than 1/2 of 1% of the gross weight of bulk shipments will not be allowed. Failure of Buyer to give Zschimmer & Schwarz notice of a claim within

30-days after receipt will act as an unqualified acceptance of the products delivered, and a waiver by Buyer of its right to make any claim with respect to such products. Zschimmer & Schwarz's total liability for any claim of any nature will not exceed the purchase price of the portion of the goods with respect to which claims are made.

Buyer's exclusive remedy against Zschimmer & Schwarz for any claim with respect to the sale of the products to the Buyer by Zschimmer & Schwarz shall be, at Zschimmer & Schwarz's option, recovery of a dollar amount which does not exceed the purchase price of the products, or replacement of the products. The remedy provided in the preceding sentence shall be Buyer's exclusive remedy, regardless of whether Buyer's claim is in contract, tort (including negligence or gross negligence, whether sole or concurrent) or otherwise so long as the claim arises in connection with this Agreement. Transportation charges for the return of products to Zschimmer & Schwarz by Buyer shall not be paid by Zschimmer & Schwarz unless authorized in advance by Zschimmer & Schwarz. IN NO EVENT WILL ZSCHIMMER & SCHWARZ BE LIABLE TO BUYER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES. BUYER ASSUMES ALL RISK AND LIABILITY RESULTING FROM USE OF THE PRODUCTS WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS. To the extent allowed by law, and notwithstanding any applicable statute of limitations to the contrary, any action by Buyer relating to a claim hereunder must be instituted no later than one (1) year after the occurrence of the event upon which the claim is based. All of the limitations set forth in this paragraph shall apply irrespective of whether Buyer's claim is based upon breach of contract, breach of warranty, strict liability or any other legal theory.

10. RELIEFS (FORCE MAJEURE AND HARDSHIP)

Should any of Seller's obligations be prevented, obstructed or delayed due to force majeure, Seller shall be relieved of all liability for the fulfillment of such obligation until the obstacle has been removed or overcome and, if it continues for more than three (3) consecutive months, both parties shall be entitled to terminate the contract. In a situation of force majeure resulting in shortage of goods, Seller may allocate the goods produced among its contract customers, including other Seller companies, and considering captive use of Seller, on a pro rata basis in a manner that is fair and reasonable. For the avoidance of doubt, Seller shall have no obligation to procure goods from other sources to fulfill its obligations. The term force majeure means all causes which are wholly or partly beyond the reasonable control of the Seller at the time of conclusion of the contract. The term shall include, but not be limited to, acts of God, labor disputes, strike, military mobilization, war, epidemics, pandemics, failure of the financial system, export and import restrictions and other governmental interferences (including regulations, decisions and specific recommendations by relevant authorities), fire, accidents, floods and other natural events, water shortage, breakdown of production equipment and other unforeseen disturbances in the production, general shortage of means of transportation or severe traffic disturbances at railroads, harbors or other traffic institutions, or default or delayed delivery from sub-supplier or any other circumstances of whatever nature beyond Seller's reasonable control and preventing, obstructing or delaying Seller's ability to fulfill its obligations. Where Seller deems that the continued performance of its contracted duties has become excessively onerous due to an event beyond its reasonable control, which Seller could not reasonably have been expected to foresee at the time of the conclusion of the contract; and the event or the consequences thereof could not reasonably have been avoided or overcome by Seller, Seller shall be entitled to invoke hardship. Buyer is bound, within a reasonable time of the invocation of the hardship by Seller, to negotiate alternative contractual terms which reasonable alleviate or mitigate the effects of such hardship in an equitable manner and to the utmost extent. Where alternative contractual terms, which reasonably alleviate or mitigate such effects are not agreed upon between Seller and Buyer as provided in this clause, Seller is entitled to terminate the contract relationship by giving written notice thereof.

11. TITLE AND RISK OF LOSS

Title to, and all risk of loss of, any products sold hereunder shall pass to Buyer at the point of shipment by Zschimmer & Schwarz.

12. MEASUREMENTS

Zschimmer & Schwarz's measurements shall govern, except in the case of proven error.

13. DELIVERY

Upon delivery, Buyer assumes full responsibility and liability for compliance with federal, state and local regulations governing unloading, discharge, storage, handling and use of the products supplied by Zschimmer & Schwarz under this Agreement.

14. GOVERNING LAW

The parties agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods, 1980. The parties also agree this contract shall be governed by the laws of the Commonwealth of Massachusetts, except with respect to its choice of law provisions. Any lawsuit brought by Buyer arising out of the transactions covered hereunder shall be instituted in the appropriate state or federal court located in Bristol County, Massachusetts, and Buyer further submits itself to the jurisdiction of said courts in the event Zschimmer & Schwarz elects to institute any action in said courts.

15. HEADINGS

The section headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference shall be derived therefrom.

16. MEDIATION

Any controversy or claim arising out of this Agreement or the breach thereof may, at Zschimmer & Schwarz's option, be referred to non-binding mediation under rules approved solely by Zschimmer & Schwarz. If mediation is not elected, or mediation is elected but a settlement does not result, Zschimmer & Schwarz shall have the right to refer the dispute to binding arbitration under rules of its choice, or to commence litigation.

17. WAIVER

Either party's failure to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon such terms, or any other terms, on any future occasion. Waiver by Zschimmer & Schwarz of any breach of these conditions shall not be construed as a waiver of any other breach.

18. SEVERABILITY

The invalidity of any provision of this Agreement will not affect the validity of the remaining provisions, and this Agreement will be construed as if the invalid provision had been omitted.

19. ASSIGNMENT

At Zschimmer & Schwarz's option, any obligation under this Agreement may be performed by Zschimmer & Schwarz or any of its affiliates. Any deliveries made under this condition may be invoiced by such affiliate and will constitute performance by Zschimmer & Schwarz. Nothing hereunder is transferable or assignable by Buyer without Zschimmer & Schwarz's prior written consent.

20. ENTIRE AGREEMENT; MODIFICATION

This Agreement constitutes the full understanding of the parties and is a complete and exclusive statement of the terms of their agreement. All sales of products are limited to and made expressly conditional on Buyer's acceptance of the foregoing terms and conditions. BY ORDERING FOR SHIPMENT ANY PRODUCTS UNDER THIS AGREEMENT, BUYER AGREES TO ALL THE TERMS AND CONDITIONS CONTAINED HEREIN.