

Saint-Gobain Performance Plastics Corporation: Terms and Conditions of Sale

1. Acceptance of Orders/Terms: All orders are subject to acceptance by Saint-Gobain Performance Plastics Corporation (SGPPL) at its Wayne, New Jersey headquarters. SGPPL reserves the right to reject any order. Possession of a price list does not constitute an offer to sell. Acceptance of any order by SGPPL is expressly conditioned on Customer's assent to the terms and conditions set forth herein ("Terms") and the waiver by Customer of any terms and conditions contained in any order form, confirmation, or any other communication of Customer, whether previously, or hereafter delivered to SGPPL which either add to, differ from, conflict with or are otherwise inconsistent with any term or condition herein. SGPPL hereby gives notice of its objection to any additional or different terms or conditions in any such order form, confirmation or communication. Customer's failure to object in writing to these Terms prior to the earlier of Customer's acceptance of the products ordered or fifteen (15) days after delivery thereof to Customer will constitute agreement by Customer to these Terms.

2. Product Changes: SGPPL reserves the right to discontinue the manufacture or sale of any product at any time or to alter, modify or redesign its products.

3. Price: All prices are subject to change without notice. Should any governmental action or request prevent SGPPL from implementing any price or continuing any price already in effect, SGPPL may at its option cancel Customer's order or any part thereof.

4. Taxes/Duties: All federal, state or local sales use or other taxes, and all duties, import fees or other assessments imposed on materials sold hereunder, or on the manufacture, sale or delivery thereof, shall be for Customer's account.

5. Credit Approval: Customer credit approval is required prior to any shipment. If SGPPL determines at any time that Customer's financial condition does not justify the extension of credit to Customer, then SGPPL may at its option require cash payments in advance or other satisfactory security prior to delivery.

6. Cancellation/Change Orders: Orders for standard products may only be revised or cancelled by Customer prior to the date of loading at the place of shipment, and only with SGPPL's prior consent. Orders for nonstandard or custom products may only be revised or cancelled by Customer prior to the commencement of production, and only with SGPPL's prior consent. Any product which SGPPL has the capability of producing but does not inventory or does not have the capability of producing is considered a nonstandard or custom product.

7. Packaging/Shipping/Risk or Loss: Unless otherwise agreed by SGPPL in writing (I) SGPPL shall select the method of shipment (II) SGPPL shall ship materials FOB (Supply's point of shipment), and (III) costs for special packaging and/or handling requested by Customer shall be the responsibility of Customer. In the event of any general freight increase or any governmental ruling or regulation that results in increased freight costs, such additional costs shall be for Customer's account. Title to, and the loss damage or shortage of such materials shall pass to Customer upon delivery to the carrier regardless of notice to Customer. SGPPL assumes no responsibility for insuring shipments unless specifically agreed to in writing SGPPL in which case the cost of insurance shall be for Customer's account.

8. Delivery: Quoted shipping and/or delivery dates are based on estimates at the time of quotation. SGPPL shall use reasonable commercial efforts to meet such shipping and/or delivery dates but SGPPL shall not be liable for any direct or indirect costs or damages including without limitation incidental or consequential damages, resulting from late deliveries. For orders with indefinite delivery dates, SGPPL shall have the right to manufacture or procure the materials covered thereby and hold such materials for Customer's account pending receipt of definite shipping instructions. Except as expressly provided otherwise herein. Customer agrees to purchase and pay for all material ordered.

9. Claims for Loss, Damage or Shortage: Upon delivery, shipments must be inspected by Customer for damage, loss or shortage prior to acceptance from the carrier. If damage, loss or shortage exists with respect to any shipment and it is not concealed, Customer shall secure a notation of such damage, loss or shortage from the carrier on the freight bill or delivery receipt. If damage, loss or shortage is concealed, Customer must notify the carrier within 15 days, hold the merchandise for its inspection and secure a signed report from the carrier noting such damage, loss or shortage signed by a representative of the carrier and

forwarded to SGPPL within 30 days of the invoice date. Any claims for damage, loss or shortage should also be filed by Customer with the carrier in writing immediately upon receipt of the materials. In no event shall SGPPL be liable for damage or loss to a shipment caused by a carrier.

10. Payment: All Invoices, whether partial or in full, shall be due and payable in full by Customer net 30 days from the date of shipment unless otherwise agreed to in writing by SGPPL. All past due, unpaid balances will bear a service charge of the lesser of one and one-half percent (1-1/2%) per month or the maximum interest permitted by applicable law. If Customer (i) becomes insolvent, files or has filed against if a petition in bankruptcy, makes any assignment for the benefit of creditors, or has a receiver or trustee appointed for it or its property, (ii) takes action to liquidate or otherwise cease doing business as a going concern, (iii) undergoes a change in ownership, (iv) fails to provide adequate assurance or security for credit extended, or (v) takes any other action that SGPPL determines in its sole discretion adversely impacts the conditions under which credit was extended, then all amounts outstanding from Customer hereunder shall at SGPPL's action become immediately due and payable. ALL PAYMENTS, WHETHER UNDER THE STANDARD PAYMENT TERMS OR OTHERWISE, SHALL BE CONSIDERED RECEIVED BY SGPPL AS FOLLOWS: (A) FOR PAYMENTS BY CHECK, WHEN THE CHECK IS RECEIVED AT SGPPL'S DESIGNATED PAYMENT LOCATION, AND (B) FOR PAYMENTS BY ELECTRONIC FUNDS TRANSFER, THE BUSINESS DAY IMMEDIATELY PRECEDING THE DAY OF WHICH THE FUNDS ARE IMMEDIATELY AVAILABLE TO SGPPL. Customer shall pay all undisputed invoices regardless of any dispute that may exist as to other delivered or undelivered goods. With respect to any disputed invoice, Customer shall pay all amounts not in dispute. Customer expressly waives the right to assert any offset or counterclaim with respect to amounts due under any invoice issued by SGPPL hereunder.

11. Returned Materials: Material may only be returned with the prior approval of SGPPL. Material returned without such approval will not be accepted and such approval may be conditioned upon Customer paying a restocking charge of up to 25% and freight costs of returned material (and out-freight if applicable). All returned materials must arrive at the point of return designated by SGPPL in salable condition, as determined by SGPPL's Quality Control Department before any credit will be issued.

12. Warranty/Limitation of Liability: EXCEPT FOR PRODUCTS FOR WHICH SGPPL HAS ESTABLISHED A SPECIFIC WRITTEN WARRANTY, THE GOODS DELIVERED HEREUNDER ARE SOLD BY SGPPL WITHOUT ANY GUARANTY AND/OR WARRANTY, ORAL OR WRITTEN (WHETHER OR NOT SUCH GOODS REMAIN IN THE FORM IN WHICH THEY ARE ORIGINALLY DELIVERED TO CUSTOMER OR ARE FABRICATED BY CUSTOMER OR ANY OTHER PARTY TO PRODUCE A FINISHED PRODUCT). THE PRODUCT-SPECIFIC WRITTEN WARRANTIES REFERENCED ABOVE AND HEREBY INCORPORATED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SGPPL BE RESPONSIBLE FOR CONSEQUENTIAL INCIDENTAL INDIRECT OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY EXPENSE FOR REMOVAL OR REINSTALLATION RESULTING FROM ANY DEFECT. INCLUDING ANY DIMENSIONAL DEFECT INVOLVING NONSTANDARD PRODUCTS SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OF ANY EXPRESS OR IMPLIED WARRANTIES. SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. THE WARRANTY PROVIDED BY SGPPL GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION NO FIELD REPRESENTATIVE DISTRIBUTOR OR DEALER OF SGPPL IS AUTHORIZED TO MAKE ANY CHANGE OR MODIFICATION TO THESE WARRANTIES.

13. Remedies for Non-Warranty Claims: THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AND THE SOLE AND EXCLUSIVE OBLIGATION OF SGPPL IN CONNECTION WITH CLAIMS RELATING TO MANUFACTURING DEFECTS ARE SET FORTH IN SECTION 12. THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AND THE SOLE AND EXCLUSIVE OBLIGATION OF SGPPL FOR ANY BREACH OF CONTRACT CLAIM THAT MATERIALS DELIVERED DO NOT OTHERWISE CONFORM TO THE ACCEPTED ORDER SHALL BE EITHER THE RETURN OF CONSIDERATION PAID BY CUSTOMER TO SGPPL RELATED TO THE BREACH, OR UPON SGPPL'S ELECTION, THE DELIVERY OF CONFORMING PRODUCTS TO CUSTOMER, WITH RESPECT TO SGPPL'S NONCOMPLIANCE WITH ANY OTHER

OBLIGATION OF SGPPL HEREIN, THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AND THE SOLE AND EXCLUSIVE OBLIGATION OF SGPPL WILL BE AS SGPPL IN ITS DISCRETION WILL DETERMINE AS FOLLOWS: (1) SGPPL MAY ELECT TO CURE SUCH NONCOMPLIANCE WITHIN REASONABLE PERIOD OF TIME, (2) IF SGPPL FAILS TO CURE SUCH NONCOMPLIANCE CUSTOMER MAY RECOVER AN EQUITABLE AMOUNT NOT TO EXCEED SUCH CHARGES AS WERE PREVIOUSLY PAID TO SGPPL BY CUSTOMER HEREUNDER. CUSTOMER WAIVES ALL OTHER REMEDIES, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE REMEDIES OF SPECIFIC PERFORMANCE AND REPLEVIN ANY ACTION BROUGHT BY CUSTOMER IN CONNECTION WITH SGPPL'S PERFORMANCE HEREUNDER MUST BE COMMENCED WITHIN SIX (6) MONTHS, AFTER SUCH CAUSE OF ACTION ACCRUES OR IT WILL BE DEEMED WAIVED. SGPPL'S LIABILITY TO CUSTOMER REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED AMOUNTS PAID BY CUSTOMER TO SGPPL FOR THE PRODUCTS INVOLVED, AND CUSTOMER RELEASES SGPPL FROM ALL CLAIMS AND LIABILITIES IN EXCESS OF THIS LIMITATION. IN NO EVENT SHALL SGPPL BE RESPONSIBLE FOR CONSEQUENTIAL, INCIDENTAL INDIRECT OR SPECIAL DAMAGES OF ANY KIND.

14. Excused Performance: SGPPL shall not be liable for nor be deemed to be in default of these Terms on account of any failure to perform its obligations or attempt to cure any breach thereof if SGPPL has been delayed or prevented from doing so by any cause or condition beyond SGPPL's reasonable control. If SGPPL determines that its ability to supply the total demand for the products, or obtain any or a sufficient quantity of any material used directly or indirectly in the manufacture of the products, is hindered, limited or made impracticable, SGPPL may allocate its available supply of the products or such material (without obligation to require other supplies of any such products or material) among itself and its customers as SGPPL determines in its sole discretion without liability for any failure of performance which may result therefrom. Delivery suspended or not made by reason of this action shall be cancelled without liability, but these Terms shall otherwise remain unaffected.

15. Fair Labor Standards: SGPPL hereby certifies that the materials sold hereunder that were produced in the United States were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.

16. Change in Terms and Conditions of Sale: The terms and conditions contained herein constitute the entire agreement between SGPPL and Customer and supersede any and all prior representatives, agreements or understandings, whether oral or written, relative to the materials delivered hereunder. No course of dealing or usage of trade shall be relevant to supplement or exploit any of these terms or conditions. No modification of these terms and conditions shall be effective unless made in writing and executed by SGPPL.

17. General: The agreement shall not be assigned by Customer without the prior written consent of SGPPL and any assignment made without consent shall be null and void. This agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. This agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to its conflicts of law provisions. The courts located in New Jersey shall have exclusive jurisdiction of all matters relating to or arising out of any sale of materials by SGPPL to Customer hereunder, and Customer hereby consents to the jurisdiction of such courts.

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