1. Offer and Acceptance. Each purchase order issued by Asahi Kasei Plastics Mexico, S.A. de C.V. or its affiliate (in either case, "Buyer") issued (each a "Purchase Order"); together with these Terms and Conditions of Purchase, is Buyer’s offer to purchase the goods ("Goods") and services ("Services") identified in that Purchase Order. Each Purchase Order, together with these Terms and Conditions of Purchase (these "Terms"), and any other documents specifically incorporated into the Purchasing Price by Buyer or separately agreed to in writing, such as specifications, drawings, requirements of Buyer’s customer, or quality requirements, are, collectively, a "Supply Agreement.

All sales by Seller to Buyer are conditional on Seller’s assent to the terms of the Supply Agreement exclusively and without regard for any Seller-proffered terms or conditions. If these Terms are first tendered to Seller before Seller tenders Seller’s terms and conditions to Buyer, these Terms are in lieu of any terms and conditions later submitted by Seller and Buyer rejects all additional or different terms and conditions of Seller, whether confirmatory or otherwise. If Buyer tenders these Terms after the tender by Seller of other terms and conditions, whether as part of a Seller-generated purchase order or otherwise, then Buyer’s acceptance of any offer by Seller associated with Seller’s terms and conditions is expressly conditioned upon Seller’s acceptance of the Supply Agreement, including these Terms, exclusively and to the exclusion of any proffered Seller terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Seller. Seller’s confirmation or acknowledgement of a Purchase Order, these Terms, or a Supply Agreement, Seller’s commencement of performance, or Seller’s tendering of Goods or Services ordered will constitute Seller’s acceptance of these Terms, and of the Supply Agreement, exclusively.

2. Invoices. Seller must submit invoices plainly marked with Buyer’s purchase order number. Except as otherwise expressly stated in a Purchase Order, Buyer will pay all undisputed amounts due on Seller’s invoices within 60 days after receipt of the Goods and/or Services to which the invoice applies.

3. Pricing. The prices contained in each Purchase Order are firm prices that are not subject to change, regardless of materials prices, the prices of labor, or any other reason. Seller must not increase its prices without Buyer’s written consent. Buyer will charge to Buyer includes all packing costs. Seller represents and warrants to Buyer that the prices and terms stated in any Supply Agreement are at least as favorable to Buyer as any prices and/or terms that Buyer offers or provides to any other customer of Buyer for each and every article, service, or item (collectively, the "Buyer’s Alternative Offerings") that Buyer provides or procures, or provides to any third party prices and/or terms that are more favorable than the prices and/or terms with respect to a Good or Service under any Supply Agreement, Seller will immediately notify Buyer of such more favorable price(s) and/or term(s) and give to Buyer the more favorable price(s) and/or term(s).

4. Payment. Unless otherwise expressly stated in a Purchase Order, all prices are F.O.B. public warehouse, and include all charges for transportation, insurance, and handling. Buyer will pay for any additional charges, including insurance and handling, within 30 days of receipt of Seller’s invoice. Buyer or Buyer’s customers may invoke a price adjustment or demand for a refund if the invoice price plus all transportation charges and handling expenses. Buyer may, or may cause a third party to, rework, repair, or correct, any Goods or Services that fail to conform to the warranties contained in these Terms and Seller shall bear all costs thereof. Buyer may reject all Goods and Services if any of the Goods or Services do not conform to the warranties contained in these Terms and Buyer will have no obligation to reject only commercial units of the Goods or Services.

10. Warranties. Seller represents and warrants to Buyer and to each of Buyer’s direct and indirect customers and, (a) that the Goods and Services will conform to their specifications, drawings, samples or descriptions furnished to or by Buyer; (b) that the Goods and Services will be free of defects in design (unless, and then only to the extent that, Buyer provided the design), materials, or manufacture; (c) that the Goods and Services will be merchantable; (d) that the Goods and Services will be fit for all Goods and that Seller will deliver all Goods free and clear of liens and encumbrances.

11. Hazardous Materials. If any Goods are, or contain, materials that are identified by any workplace health or safety or environmental law as hazardous, Seller will promptly label the Goods as such and will provide to Buyer, before delivery or upon request, all information necessary to handle and store the Goods safely.

12. Indemnification. Seller will indemnify, defend, and hold harmless Buyer and Buyer’s equityholders, directors, managers, officers, employees, agents, and direct and indirect customers (each a "Buyer Indemnitee") against any third-party claims or demand for injury or death of persons, property damage, economic loss, and any other damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other theory, to the extent caused or alleged to have been caused by Seller’s defective design, manufacture, or sale of the Goods or provision of Goods or Services, Seller’s willful or negligent acts or omissions in its performance under a Supply Agreement, or any other fact that, if true, would be, or be evidence of, a breach by Seller of any warranty under a Supply Agreement. Seller will indemnify Buyer against all costs, losses, damages, and expenses (including reasonable legal fees) incurred by Buyer or its customers in defense of such claims or demands, or in any way in connection with a Buyer Indemnitee’s defense or prosecution of any claim or demand against Buyer arising out of Seller’s breach of any warranty under a Supply Agreement.

13. Limitation of Buyer’s Liability. Seller’s liability for breach of any warranty under a Supply Agreement transfer to Seller any right in any idea, invention, improvement, new and useful process, machine, manufacture, or composition of matter, new and useful improvement thereof, novel ornamental design of a functional item or work of authorship, patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right ("Intellectual Property Right") of Buyer for Buyer’s breach, Seller grants to Buyer a non-exclusive, non-transferable right and license to use and have used Seller’s Intellectual Property Rights to obtain from alternate sources products and services similar to the Goods and Services to the extent of the
volume of Goods and Services that Buyer could have ordered under the affected Supply Agreement(s). (c) Intellectual Property Rights Generated in Performance of Supply Agreement. If Seller, as a result of the performance of this Agreement, creates, discovers, invents, or reduces to practice anything in which Intellectual Property Rights arise or exist, Seller will immediately (i) give notice to Buyer of the creation, discovery, invention, or work of authorship and the Intellectual Property Rights therein, (ii) assign to Buyer all such Intellectual Property Rights, and (iii) cooperate fully with Buyer in attempting to secure such rights for Buyer. Unless otherwise agreed by both parties (but not including by any available personnel to assist in prosecution of such rights), at Buyer’s expense for reasonable out-of-pocket costs, in prosecuting, securing, registering, and perfecting such rights in Buyer.

(d) Infringement. Seller will indemnify, defend, and hold harmless each Buyer Indemnitee from and against all claims, suits, actions, liabilities, losses, damages, penalties, interest, costs, and expenses, including reasonable legal fees, arising out of, or relating to, any actual or alleged infringement by the Goods or the Services (or the possession or use thereof by any direct or indirect customer of Buyer) of a third-party Intellectual Property Right, contract right, or other right.

15. Compliance with Law. In the performance of all Supply Agreements, Seller will comply with all federal, state, and local laws, ordinances, rules, orders, regulations or requirements that are applicable to each Supply Agreement and/or to Seller. Seller will, upon Buyer’s request, furnish to Buyer such certificates of compliance with the same, including, but not limited to, Customer environmental requirements, and in such form, as Buyer from time to time requires.

16. Licenses, Permits. Where a rule of law requires that the seller or provider of Goods or Services possess any license or permit in order to do so, Seller will, at all applicable times, procure and maintain such licenses and/or permits. Where Goods or Services are to be delivered or rendered on Buyer’s premises (including, but not limited to, in the case of construction on, or alteration of, real property, or installation requiring a builder’s permit), Seller will apply for, and cause to be issued (whether to Buyer, Seller, or otherwise), such permits as are required to provide the Goods and Services as required.

17. Activities at Buyer’s Facilities. Seller will cause each agent of Seller to enter any facility of Buyer to comply with all workplace rules and security requirements of Buyer.

18. Changes. Buyer reserves the right at any time to make changes in drawings and specifications as to any Goods or Services. If any actual difference in cost to Seller results, the applicable price(s) shall be equitably adjusted, provided that Seller makes a written claim for adjustment within 10 days after first receiving the proposed changes. Each Supply Agreement is also subject to change, modification, suspension, or cancellation by Buyer in the event of fire, accidents, strikes, government acts, acts of God, or failure of Buyer to comply with all instructions in orders by Buyer’s customers, or any other conditions or events beyond Buyer’s commercially reasonable control.

19. Term and Termination. (a) Generally. Each Supply Agreement will remain in effect for the term specified in the Supply Agreement and the provisions of the North American Free Trade Agreement or any other agreement between Buyer and Seller and Buyer each irrevocably consent to the jurisdiction of, and venue in, such courts.

20. Buyer Property. Bailment. All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, other property purchased by Buyer from Seller, furnished by Buyer to Seller, paid for by Buyer, or for which Buyer reimburses Seller ("Buyer Property") shall at all times be and remain the property of Buyer. BUYER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO BUYER’S PROPERTY AND PROVIDES BUYER’S PROPERTY "AS IS" AND WILL NOT PERMIT ANY THIRD-PARTY ENCUMBRANCE OR CLAIM OF ANY KIND TO ATTACH TO ANY THIRD-PARTY PROPERTY. Buyer will properly segregate Buyer Property and prominently mark and/or tag all Buyer Property as being the property of Buyer. Seller will, at its own expense, insure for the benefit of Buyer to its full replacement value, all Buyer Property in Seller’s possession or control. Seller may not use any Buyer Property for any purpose other than Seller’s performance of a Supply Agreement for Seller and, in any case, Seller may not use any Buyer Property for its own benefit or the benefit of any third party. Seller may not move any Buyer Property from the premises of Buyer until Buyer periodically reviews the location on the premises of Buyer to examine the written and signed instructions of Buyer. Buyer may enter onto Seller’s premises at any reasonable time to inspect and/or take all Buyer Property and Seller’s records with respect thereto. Seller will arrange with any landlord or other third party any access necessary to any premises over which any such third party may or does limit access. Upon completion of Supply Agreements or parts thereof or their cancellation or termination for whatever cause, Seller shall: (a) Hold and protect all Buyer Property pending instructions from Buyer as to disposition of the same, free of all charges for such service and storage; and (b) Upon receiving instructions from Buyer to deliver the Buyer Property to Buyer or Buyer’s nominee, promptly deliver the Buyer Property as instructed.

21. labor. Buyer will notify Seller of the contract expiration date at least six months before the expiration of a current labor contract covering Seller’s employees or the date of the assignment. Buyer may, at its option, permit one or more of its affiliates to purchase Goods or Services under any Supply Agreement, any such purchases by Buyer’s affiliates will be solely for each Buyer affiliate’s own account, and Buyer will have no liability for any breach by any Buyer affiliate with respect to such Buyer affiliate. (c) Buyer; (i) receive the benefits, credits, and rights; (ii) purchase the Goods and Services, at the price or prices, as adjusted if applicable, for such purpose; and (iii) operate in accordance with the terms and conditions set forth in such Supply Agreement at the time of purchase and in addition to any other remedies of Buyer or otherwise permitted by law, Buyer may cease delivering the Buyer Property to Buyer or Buyer’s nominee, promptly deliver the Buyer Property as instructed.

22. Confidential Information. Seller will keep in confidence and prevent the disclosure to any third party of all information and data disclosed to it by Buyer or that Seller learns from Buyer, in either case that is not readily ascertainable by the public by proper means, including, but not limited to, quotes, business plans, technological techniques, programs of the country, or rights of work made for hire of others.

23. Remedies Cumulative. Each remedy of Buyer is cumulative with each other remedy contained in each Supply Agreement and with all other remedies available to Buyer at law, in equity, and otherwise, and no pursuit by Buyer of any particular remedy shall prejudice Buyer’s right to any other remedy.

24. Assignment; Third Parties. Seller may not assign or subcontract its duties or responsibilities under any Supply Agreement without the prior written consent of Buyer.

25. Governing Law. Each Supply Agreement and all related agreements between Buyer and Seller and Buyer each irrevocably consent to the jurisdiction of, and venue in, such courts.

27. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL BUYER BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR (A) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES OR (B) DAMAGES IN EXCESS OF THE PRICE OF THE GOODS OR SERVICES THAT ARE THE SUBJECT OF THE CLAIM. THESE LIMITATIONS OF LIABILITY APPLY NOTWITHSTANDING THAT THEY CAUSE ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE AND NOTWITHSTANDING THAT BUYER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

28. Miscellaneous. (a) Choice of Law; Jurisdiction; Venue. These Terms and all Supply Agreements will be governed by and construed in accordance with the laws of the State of Queretaro, Mexico, without regard for their conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or any Supply Agreement. Any action or claim arising out of or related to these Terms or any Supply Agreement may be brought only in the courts of the State of Queretaro, Mexico, and Seller and Buyer each irrevocably consent to the jurisdiction of, and venue in, such courts.
(b) Advertising. Seller will not advertise or otherwise disclose to the public its relationship with Buyer or Buyer’s customers without Buyer’s prior written consent, except as is necessary in order to perform a Supply Agreement or as required by law.

c) Audit Rights. Seller will maintain, for not less than three years after completion of each Supply Agreement, records necessary to support amounts charged to Buyer under such Supply Agreement. Buyer and its representatives may audit such records to the extent needed to verify that Seller’s invoices and any payments to Seller are supported by the Supply Agreement. Any audit will be conducted at Buyer’s expense (but will be reimbursed by Seller if the audit reveals material errors in the amounts charged), at reasonable times, and at Seller’s usual place of business.

(d) Relationship of the Parties. Buyer and Seller are independent contractors, and nothing in a Supply Agreement makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

e) Waiver. Buyer’s failure to insist on performance of any obligation, or to exercise any right or privilege, or Buyer’s waiver of any obligation, shall not thereafter be a waiver of other terms, conditions, rights, or privileges, or of the same terms, conditions, rights, or privileges on a different occasion.

(f) Severability. If any provision of a Supply Agreement is invalid or unenforceable in any jurisdiction, such invalidity or unenforceability will not affect the validity or enforceability of any other provision of a Supply Agreement or the validity or enforceability of that provision in any other jurisdiction.

(g) Notice. Any notice required or permitted to be given under this Agreement must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery or (b) if given by nationally-recognized courier or mail service (in either case that has realtime or near-realtime tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver’s premises according to the tracking records of the courier or mail service. The addresses for notice for each party are those on the Purchase Order, Attn: Legal Department. Either party may change its address for notice by giving to the other party notice of the change of address.

(h) Remedies Cumulative. Each and every remedy of Buyer is cumulative and no exercise or pursuit by Buyer of any particular remedy will be deemed an election of that remedy exclusively. Any claim, suit, or action resulting from any breach on the part of Buyer under these Terms or any Supply Agreement must be commenced within six months after the cause of action has accrued or be forever waived.

Drafting Party. No rule that requires the construction of any language against the drafting party will apply to the construction of these Terms.

(i) Entire Agreement. Each Supply Agreement constitutes the entire agreement between the parties with respect to its subject matter, and each Supply Agreement supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of that Supply Agreement, including, but not limited to, any Seller quotation unless Buyer specifically incorporates it into in a Supply Agreement in a signed writing. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of any Supply Agreement will be binding unless in writing and signed by the party against which enforcement is sought.