

TERMS AND CONDITIONS OF SALE

Sales under these terms and conditions (these "Terms") are by Asahi Kasei Plastics North America, Inc., a Michigan, USA corporation, ("Seller") to the entity named as the buyer or purchaser ("Buyer") in the documentation to which these Terms are attached or with which they are associated and are conditional upon Buyer's agreement with these Terms and only these Terms. If these Terms are first tendered to Buyer before Buyer tenders a purchase order or similar document to Seller, these Terms are in lieu of any terms later submitted by Buyer and Seller rejects all additional or different terms and conditions of Buyer, whether confirmatory or otherwise. If Seller tenders these terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then Seller's acceptance of any offer by Buyer associated with Buyer's terms is expressly conditioned upon Buyer's acceptance of these Terms exclusively and to the exclusion of any proffered Buyer terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Buyer. Buyer's performance, or acceptance of, or payment for, any products from Seller will constitute Buyer's acceptance of these Terms exclusively. These Terms, together with any associated description of the products and quantity and price terms that are the subject of the purchase and sale transaction under these Terms constitute a "Supply Agreement." Buyer represents and warrants that any products that it purchases from Seller are for business or commercial use only and not for domestic, personal, family, or household use.

1. **Description of Products.** Seller agrees to sell, and Buyer agrees to purchase, the products described as part of the Supply Agreement.
2. **Prices; Quantities.** The prices of the products and/or services supplied by Seller are as stated in the Supply Agreement. Prices may be adjusted to the prices in effect at the time of delivery, whether as a result of fluctuations in commodity prices or otherwise. Except as otherwise stated in a Supply Agreement, all pricing is EXW (Incoterms 2010) Seller's facility or such other location as Seller specifies in a Supply Agreement. Buyer acknowledges and agrees that the prices for certain products offered by Seller are based on Buyer purchasing a stated minimum order quantity and/or minimum shipment quantity of those products. Where Buyer orders a product that is subject to a minimum order quantity and the quantity ordered does not meet that minimum order quantity, Seller reserves the right to adjust the price or ship the minimum order quantity at Seller's discretion. Where a Supply Agreement states a quantity but does not state a period over which the quantity is to be ordered or delivered, the period over which the quantity is to be ordered or delivered will be a reasonable time under the circumstances. Where a Supply Agreement states a quantity over a specified period but does not identify specific quantities to be shipped within that period, the parties anticipate that Buyer will order, and Supplier will ship, the quantity evenly over the stated time. Seller will use commercially reasonable efforts to accommodate orders (a) in excess of the quantities specified and/or (b) for quantities greater than would be expected if the orders were evenly spread over the contemplated time period; but Seller makes no guaranty of shipment of such excess quantities and, further, reserves the right to allocate products to customers from which Seller has firm orders for specific quantities at specific times.
3. **Taxes and Fees.** All prices are exclusive of sales, use, excise, customs, export, import, commodity and/or any other taxes. Buyer will pay all such taxes and any license fees or other charges incidental to the sale of products. Buyer will, at Seller's request, provide to Seller reasonable proof of payment by Buyer of such taxes, fees, and assessments. If Seller is required to prepay any taxes on behalf of Buyer, Buyer will promptly reimburse Seller for all such taxes paid. If provision of the products and/or services requires any documentary letter of credit or similar document, instrument, or process, Buyer shall pay all fees and costs associated therewith.
4. **Payment Terms.** Unless provided otherwise in writing in a Supply Agreement, payment terms are net 30 days from date of shipment. Buyer will pay any invoice issued by Seller without discount, setoff, or reduction. Seller may, at its sole discretion, require payment by bank transfer, cash, certified check, or letter of credit. All trading accounts are subject to prior approval of Seller's credit department in accordance with Seller's credit policies and practices in effect from time to time. Seller may revise the amount of credit or terms of payment at any time for any reason. If Buyer fails to make payment when due or defaults in any other way, Seller may, at its option, without limiting any of its other rights or remedies available under these Terms or applicable law, and until Buyer's account is current: (1) withdraw credit and suspend or cancel performance under any or all Supply Agreements; and/or (2) reschedule shipment. Seller may invoice separately for each shipment and, in any case, Buyer will pay for each shipment as invoiced without regard for other shipments.
5. **Shipments.** Seller will ship EXW (Incoterms 2010) Seller's facility or such other location as Seller specifies in a Supply Agreement. Seller may select the freight carrier, and Buyer accepts carrier selection by Seller unless Buyer timely specifies in writing an alternative carrier reasonably acceptable to Seller. Delivery of products to the carrier constitutes delivery to Buyer, title to products will pass to Buyer, and Buyer will have all risk of loss or damage at that time. Any claims against Seller for shortages or non-conformance that could, with due diligence, be discovered by inspection upon receipt must be made within 10 days after receipt. Seller will package the products in accordance with Seller's standard practice. Seller may make deliveries in installments with appropriate partial invoicing issued for each such installment. Seller may, but will not be required to, shorten lead times and deliver products more quickly than originally estimated, in accordance with Buyer requests, but reserves the right to increase pricing accordingly, or impose break-in charges, for directly or indirectly affected products or shipments thereof. Each shipment of products to be delivered is a separate sale and Buyer will pay the price for each shipment without regard for any failure to deliver, or non-conformity of, any previous or subsequent shipment. Seller's breach or default in the delivery of any particular shipment will not permit Buyer the right to refuse to receive any other shipment. Time is not of the essence and Buyer is not entitled to reject an otherwise conforming tender made within a reasonable time. Any failure by Buyer to pay for any shipment within the time stated for payment is an anticipatory material breach with regard to other shipments. Once Seller commences production of products and/or provision of services and/or determines a shipping or delivery date with regard to the same, Seller will be entitled to provide, ship, and/or deliver such products and/or services and receive payment therefor and Buyer may not revise the timing for receipt of such products and/or services.
6. **Security Interest.** Buyer grants to Seller a security interest in the products supplied under any Supply Agreement and any proceeds thereof and accessions thereto as security for Buyer's obligations (payment and otherwise) to Seller. Seller may file any financing statement or similar document and/or take any other action permitted by applicable law to perfect and enforce such security interest and, if local law requires that a financing statement or similar document be signed or otherwise acknowledged by a debtor party, Buyer authorizes Seller to execute and deliver on Buyer's behalf any such document.
7. **Termination; Default.**
 - (a) **Termination for Default.** Either party may, without prejudice to its other rights or remedies, terminate a Supply Agreement by notice to the other party if: (1) the other party files a petition in bankruptcy or assignment generally for the benefit of creditors or initiates, or has initiated against it, any similar proceeding under any law with respect to creditor's rights, adjustment of debts, or similar law, becomes insolvent, becomes, or admits that it is, unable to pay its debts generally as they become due, or has a third-party manager or receiver appointed over any of its assets or (2) the other party defaults under these Terms and does not remedy the default within 30 days (10 days in the case of payment defaults) following notice by the aggrieved party.
 - (b) **Adequate Assurance of Performance.** In any circumstance where Seller has the right to demand adequate assurance of Buyer's performance (such as, but not limited to, under Section 2-609 of the Uniform Commercial Code, where applicable), Buyer will provide such assurance within a reasonable time not to exceed five days.
 - (c) **Other Termination by Seller.** If Buyer fails to pay in accordance with these Terms or any Supply Agreement or fails to comply with any provision of these Terms or any Supply Agreement, Seller may terminate any Supply Agreement as to unshipped portions of the products and terminate any applicable raw materials orders placed with its suppliers, and Buyer will remain liable for shipped products. If Seller elects to continue to make shipments after the Buyer has failed to make payment for the shipment in advance or fails to provide adequate assurances of performance, no action by Seller shall constitute a waiver of any default by the Buyer or in any way affect Seller's remedies for any such default.
8. **Product Changes.** Seller may, at any time and without notice to the Buyer, change the product(s) in any way that does not adversely affect the form, fit or function of the product(s) in any material respect. If Buyer at any time directs changes or causes Seller to make changes to the product(s), drawings, or specifications of the product(s), or otherwise wishes to change the scope of a Supply Agreement, including, but not limited to, such matters as inspection, testing, or quality control, Seller may terminate the Supply Agreement with respect to the items affected by such change(s) or reasonably change the time for performance and/or the price of product(s) to take into account the changes.
9. **Technical Assistance.** Except as provided for in a separate signed agreement or as expressly stated in a Supply Agreement, Seller will not be required to provide technical advice, facilities or service in connection with any Supply Agreement or the products supplied.
10. **Assignment.** Seller may subcontract the performance of any obligation of Seller under any Supply Agreement, provided only that Seller remains primarily liable for the performance of the obligation. Buyer may not assign any right or obligation under any Supply Agreement. Seller may assign any right or obligation under any Supply Agreement and, provided only that Seller's assignee has assumed the obligation(s) of Seller, Seller will, upon such assignment, have no further liability as to the assigned obligations.
11. **Warranty.**
 - (a) **Products Generally.** Seller warrants solely to Buyer that each product supplied under these Terms will, at the time of delivery, conform to Seller's written specifications during normal use and/or operation. Seller's sole and exclusive obligation, and Buyer's sole remedy for failure of any product to conform to the above warranty is, at the option of Seller, repair or replacement of the non-conforming product or a refund of the monies paid by

Buyer for the non-conforming product. Buyer must notify Seller in writing promptly of any failure by a product to conform to the above warranty. Buyer will pay for shipping of any non-conforming product to Seller and Seller will pay for return shipping to Buyer. Liability under this warranty will be reduced to the extent that: (1) the product is not maintained according to Seller's specifications, (2) the product fails, malfunctions, or is damaged as a result of improper handling, improper storage conditions (including, but not limited to, where applicable, temperature and humidity), installation, maintenance, removal, modification or repair, (3) the non-conformity is caused by casualty, abuse, or improper use, (4) the product is altered other than by Seller or with Seller's express written approval, (5) the product is installed, used, or configured other than as contemplated by the parties under the applicable Supply Agreement or at or in a place other than that contemplated by the parties under the applicable Supply Agreement, (6) the product is used, operated, or connected with a third-party good or service not expressly designated by Seller's documentation and specifications for the product, (7) any failure results from a design or specification supplied by Buyer.

- (b) Experimental or Pre-Commercial Products. SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ANY PRODUCT THAT IS DESIGNATED "EXPERIMENTAL," OR "PRE-COMMERCIAL" OR CARRIES AN "X" OR "Y" DESIGNATION IN ITS PRODUCT CODE.
12. Product Returns. Buyer may not return any product unless Seller approves in writing the return. Upon Seller's request, Buyer will provide to Seller samples of products alleged by Buyer to be eligible for return. All return documentation must contain Seller's Returned Materials Authorization ("RMA") number. Seller may refuse returned shipments not approved by Seller or not properly identified. The request for return approval must include serial number, part number, lot number, and date code (each as applicable), and full identification of products to be returned. Proper handling procedures must be used in the packing and shipping of all returns. Products must be returned in the same or equivalent container in which they were shipped with the RMA number clearly visible on the package. Buyer retains title and assumes all risk of loss relating to products returned for repair or replacement until Seller completes repair or identifies products as replacements.
13. Disclaimers and Limitation of Liability. EXCEPT AS EXPRESSLY DESCRIBED IN SECTION 11, ALL GOODS AND SERVICES DELIVERED UNDER ANY SUPPLY AGREEMENT ARE SUPPLIED "AS IS" AND WITH ALL FAULTS. SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY GOODS OR SERVICES, AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO THEIR QUALITY, PERFORMANCE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING IN ANY SUPPLY AGREEMENT OR OTHERWISE TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS) ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OR SALE OF ANY GOOD OR SERVICE BY BUYER OR ANY CUSTOMER OR SUCCESSOR HOLDER (INCLUDING, BUT NOT LIMITED TO, ANY END USER) OF ANY GOOD OR SERVICE; BY THE PERFORMANCE OR FAILURE OF SELLER TO PERFORM UNDER THESE TERMS; BY ANY OTHER ACT OR OMISSION OF SELLER; OR BY ANY OTHER CAUSE. IN NO EVENT WILL SELLER'S TOTAL LIABILITY TO BUYER FOR ANY CLAIM EXCEED THE SUM PAID TO SELLER BY BUYER FOR THE GOODS OR SERVICES SUPPLIED UNDER THE SUPPLY AGREEMENT IN CONNECTION WITH WHICH THE CLAIM ARISES. NO ACTION MAY BE BROUGHT BY BUYER FOR ANY BREACH OF THESE TERMS MORE THAN ONE YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION.
14. Indemnification.
- (a) By Buyer. Buyer will defend, indemnify, and hold harmless Seller and its employees, officers, directors, agents, affiliates, successors and assigns from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys' fees) whatsoever that are incurred by or made against any indemnitee that arise out of or result from (i) the acts, omissions, negligence or misconduct of Buyer, (ii) any claim by any successor holder (including, but not limited to, any end user) of any of the products, or any other person or entity, related to the products sold by Seller, or the purchase, installation, or use of such products, or any undertakings, acts or omissions relating to such products, to the extent such claim is not based upon a breach of an express warranty of Seller, or (iii) any Buyer breach of any obligation in Section 18.
- (b) By Seller. Seller will defend, indemnify, and hold harmless Buyer and its employees, officers, directors, agents, affiliates, successors and assigns from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys' fees) whatsoever that are incurred by or made against any indemnitee that allege that the products, or their use by an indemnitee as contemplated by a Supply Agreement or the applicable documentation, infringe upon a copyright or patent of a third party. Seller's obligations under this Section 14(b) will not apply to any goods or services (a) not supplied by Seller, (b) used in a manner not expressly authorized by a Supply Agreement or the applicable documentation, (c) to the extent made or modified in accordance with Buyer's specifications, (d) to the extent that the alleged infringement or misappropriation results from any customizations, modifications, alterations or changes not developed by Seller, (e) combined with other goods, services, processes, or materials where the alleged infringement would not exist but for such combination, (f) that is not the most current update, version, or release if infringement would have been avoided by use of the most current update, version, or release and Seller makes the same available to Buyer, (g) where Buyer continues the allegedly infringing activity after being notified thereof and provided modifications that would have avoided the alleged infringement, or (h) to the extent that the rights of any third party asserted with regard to goods or services were arise out of, or are connected with, claims (whether based in patent law or otherwise) to inventions, technologies, or methods that were in widespread unlicensed use by third parties as of the time the good or service was delivered to, or used by, Buyer or any affiliate of Buyer. Buyer will promptly give to Seller notice of, and all pertinent information related to, any claim, suit, or cause of action that might or does lead to an indemnification obligation and will, at Seller's request, grant to Seller exclusive control of the defense and/or settlement of any such claim, suit, or cause of action, subject only to Buyer's consent (not to be unreasonably withheld, delayed, or conditioned) with respect to any settlement that purports to bind a Buyer indemnitee where the settlement involves injunction or any admission of fault or liability by the Buyer Indemnitee.
15. Fail-Safe or Critical Operations. Seller's products are not designed, intended, authorized, or warranted to be suitable for use or resale as control equipment in, or for other applications related to, hazardous or critical environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems, or other application in which the failure of a product could lead to death, personal injury, or severe physical or environmental damage. Buyer will not use or permit to be used the purchased products for such fail-safe or critical applications, and further agrees to indemnify Seller and its employees, officers, directors, agents, affiliates, successors and assigns against all actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of any breach of Buyer's obligations in this Section 15.
16. Confidentiality. Buyer will, notwithstanding that any Supply Agreement may have terminated, keep in confidence and prevent the disclosure to any person all information and data disclosed to it by Seller that is marked confidential or by its nature ought to be considered confidential, including, but not limited to, quotes, business plans, technological techniques, prints, inventions, and research and development. Notwithstanding the foregoing, Buyer will not be liable for disclosure of any confidential information if the same: (i) is or becomes readily ascertainable by the public by proper means without breach by Buyer of any obligation to Seller of confidentiality; (ii) is disclosed with the prior written approval of Seller; or (iii) becomes known to Buyer from a source other than Seller without breach of these Terms by Buyer or breach by the source of any obligation of confidentiality. Seller will have no obligation of confidentiality or non-use with respect to information that Seller receives from buyer unless such obligations are established in a separate written confidentiality agreement signed by Seller.
17. Intellectual Property. Except as expressly and particularly set forth in a separate written agreement signed by Seller, Buyer will obtain no right whatsoever in any copyright, patent, trademark, trade secret, mask work, or other intellectual property right of Seller or that Seller creates, originates, discovers, or reduces to practice, or in which Seller acquires author or other rights, whether in consequence of these Terms, any Supply Agreement, any transaction or dealing between Seller and Buyer, or otherwise. Seller reserves all such rights to itself. The parties acknowledge that, absent a specific and separate written and signed agreement between the parties expressly granting rights to Buyer, no Supply Agreement is intended to require that Seller perform any development work for Buyer or create for Buyer any work of authorship, invention, or other matter in which proprietary rights exist.
18. Export Controls. Unless an appropriate license, exemption or similar authorization has been duly obtained, Buyer shall not, nor shall Buyer authorize or permit its employees, agents, successors or assigns to, export or re-export any products to any country identified as a prohibited destination by any applicable laws or regulations. Furthermore, Buyer hereby agrees to undertake and perform all "denied party screening" or similar obligations imposed by or arising under applicable laws or regulations. Buyer agrees and acknowledges that, to the extent applicable, these commodities and/or technology will be/were exported from the United States or other country of origin solely in accordance with the United States Export Administration Regulations or other export regulations applicable in the jurisdiction of origin. Any diversion contrary to U.S. or other applicable law is prohibited.
19. End-of-Life Disposition. Buyer will, or will require Buyer's successor owner of the product(s) to, at Buyer's or the successor's own expense, properly dispose of the products according to any applicable law.
20. Governing Law; Jurisdiction; Venue; Severability. These Terms and all Supply Agreements will be governed by and construed in accordance with the law of the State of Michigan 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 Michigan sitting in Livingston County, Michigan or the United States District Court for the Eastern District of Michigan and Seller and Buyer each irrevocably consent to the jurisdiction of, and venue in, such courts. If

- any provision of any Supply Agreement is illegal or unenforceable, such provision will be reformed to, insofar as is possible, permit it to conform with applicable law and, in any case, the remaining provisions will continue in full force and effect.
21. **Use of Products.** Buyer shall use, and require its employees, contractors, and agents to use, all available safety precautions, in addition to any specifically set forth in any manuals, material safety data sheets, technical data sheets, instruction sheets, if any, furnished by Seller (or available from raw material suppliers) relating to Seller's products. If Buyer does not receive any required material safety data sheets for any product from Seller, Buyer will request them from Seller. If Buyer fails to strictly observe each and every one of the obligations set forth in this Section 21 or if Buyer's use of any of Seller's products is in violation of any standard or rule of the American National Standards Institute or Occupational Health and Safety Act, or other applicable workplace law, regulation, or standard, Buyer will indemnify, defend, and hold harmless Seller and Seller and its employees, officers, directors, agents, affiliates, successors and assigns from and against any and all claims, demands, damages, actions, and causes of action, as well as any and all liability, loss, or expense of any kind, including reasonable attorneys' fees arising from, connected with or in any way pertaining to any such failure by Buyer.
 22. **Notification.** Buyer shall notify Seller promptly, and in any event within 30 days, after any accident or failure involving Seller's products that results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining causes of such accident or failure.
 23. **Attorneys' Fees and Costs.** Buyer will pay Seller's reasonable attorneys' fees and other costs and expenses for any legal or equitable action undertaken by Seller to enforce these Terms or the provisions of any Supply Agreement.
 24. **Errors.** Any and all typographical or clerical errors made by Seller in these Terms, in Seller's quotations or communications, or any Supply Agreement are subject to correction by Seller.
 25. **Force Majeure.** Seller will not be liable for failure to deliver, or for delay in delivery of, the products to the extent arising out of or related to causes beyond its reasonable control, including, without limitation, acts of God or of the public enemy, acts of any governmental authority, fires, floods, other casualties, severe weather, epidemics, quarantine restrictions, strikes, labor disputes or shortages of labor, embargoes, wars, riots, civil commotion, shortage of rail cars or semi-trailers and trailers, delays in transit, unavailability of transportation services, or inability to secure necessary materials (whether at all or at commercially reasonable prices). In no event will Seller be liable for any loss or damage, including in particular, direct, incidental, indirect, special, punitive or consequential damages (including loss of profits) due to any failure to deliver or delay in delivery. If Seller is wholly or partially unable to perform because of any cause beyond its reasonable control, Seller may allocate production and deliveries among Seller's customers or may terminate the Supply Agreement without any further liability to Buyer.
 26. **Remedies Cumulative.** All rights and remedies of Seller under these Terms and any Supply Agreement are cumulative. No pursuit or receipt by Seller of any particular remedy will constitute an exclusive election of remedies and Seller will have the benefit of all remedies available at law, in equity, or otherwise.
 27. **Cross-Default.** Any default by Buyer under any other agreement to which Seller or any Seller affiliate is a party will be a default by Buyer under these Terms and of each Supply Agreement. Such other agreements may, where applicable, be (but are not limited to), distributor or similar agreements.
 28. **Third Parties.** Except for the indemnitees under the indemnification obligations contained in these Terms (each of whom is an express third-party beneficiary of such indemnification obligations), there are no third-party beneficiaries of any right or obligation under these Terms or any Supply Agreement.
 29. **Third-Party Terms.** Under no circumstances will Seller be obliged or liable to Buyer or to any third party with respect to any representation, warranty, covenant, duty, or liability to any third party, whether as part of a "directed sourcing" arrangement or otherwise. Without limiting the foregoing, Seller expressly disclaims and rejects any obligation of any kind to comply with any terms or conditions of Buyer's direct or indirect customer(s), regardless of any obligation to such persons taken on by, and/or imposed upon, Buyer and regardless of whether Seller is aware of any such requirement upon Buyer. Seller will be liable to any third party, if at all, solely according to such separately negotiated, written, and signed agreement, if any, as Seller actually negotiates and executes with such third party.
 30. **ISO 9001 7.4.1.2 Certification.** If, and to the extent that, Seller expressly agrees to meet ISO 9001 requirements, Seller may elect to perform an annual second-party audit process conducted by qualified auditor and such process will, as between Buyer and Seller, satisfy any requirement of ISO 9001 7.4.1.2.
 31. **Entire Agreement.** These Terms, together with any specific terms contained in any Supply Agreement, any separate written and signed distributor agreement, and any separate written confidentiality agreement between the parties, embody the entire agreement between the parties with regard to the subject matter hereof and thereof and supersede all other prior agreements between the parties with regard to such subject matter. Neither these Terms nor any Supply Agreement may be modified, except in writing and signed by the party against whom enforcement is sought.

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