

Phoenix Optical Polymers LLC Terms and Conditions of Sale

OFFER, GOVERNING PROVISIONS AND CANCELLATION.

This writing constitutes an offer or counteroffer by Phoenix Optical Polymers LLC ("Seller") to sell the goods and/or services described in the attached document in accordance with these terms and conditions, is not an acceptance of any offer made by buyer and is expressly conditioned upon assent to these terms and conditions. No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing. Seller hereby objects to any such additional or different terms or conditions contained in any Phoenix Optical Polymers LLC order or other communication heretofore or hereinafter received from buyer. No order may be cancelled or altered by buyer except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent.

PRICES.

The prices stated in the attached document are EXW (incoterms 2010) Seller's plant and are based on the quantities specified for delivery in a single lot unless otherwise indicated on the attached document. Such prices are subject to adjustment by Seller for any change made by buyer and approved by Seller in quantities, delivery or other terms hereof. All prices are payable in United States Dollars. All prices are subject to change upon notice and the price of goods on order but unshipped will be adjusted to the price in effect at the time of shipment.

PAYMENT.

Payment terms are net thirty (45) days after shipment unless Seller requires payment in advance; provided, however, that payment of the full amount of any invoice shall become immediately due and payable in the event that any payment thereon is not made when due. Buyer agrees to pay the maximum interest allowable under state law on any late payments. Payments are to be made only at Seller's main office, unless otherwise specified in writing by Seller.

Buyer agrees to pay all costs including attorney's fees arising in connection with the collection of late payments.

TAXES AND FEES.

Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value-added tax, duty, custom, inspection or testing fee or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and buyer shall be paid by buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee, interest or charge, buyer shall reimburse Seller therefor.

SHIPMENT, RISK OF LOSS AND TITLE.

Unless otherwise specified by buyer, Seller shall place the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable, having regard for the nature of the goods and good commercial standards. Risk of loss of the goods shall pass to buyer at the time the goods are tendered for shipment.

DELIVERY; CLAIMS.

Buyer shall bear all expenses paid or incurred by Seller in delivering the goods. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated on the attached document; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve buyer of its obligations to accept remaining deliveries. All delivery dates are approximate.

All claims for shortage, loss or damage must be made within five (5) days after delivery of the goods with respect to which the claim is made, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by buyer. Any claims for loss or damage to goods in transit shall be made to the carrier and not to Seller.

FORCE MAJEURE.

Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including, without limitation, any act of God, nature, act of buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason shall be rescission of this agreement.

CONTAINERS.

All returnable containers used in connection with shipments of Seller's goods are the property of Seller and are loaned to buyer. Buyer shall use such containers only for reasonable storage of Seller's goods originally delivered therein and shall upon Seller's request return at Seller's expense such containers in good condition when empty.

MODIFICATION/SUSPENSION.

Cancellation, modification, suspension or delay in shipment of buyer's order will not be accepted on terms that will not fully indemnify and reimburse Seller against loss; such indemnity to include recovery of all direct costs incurred, including normal indirect and overhead charges.

CREDIT APPROVAL.

Shipments, deliveries and performances of work shall at all times be subject to the approval of Seller's credit department. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon such other terms and conditions satisfactory to such department.

SELLER'S WARRANTY.

Unless specifically agreed to otherwise by the Seller in writing, Seller warrants its products to conform to its specifications at the time of shipment. Seller will refund per Phoenix Optical Polymers LLC price for the purchase price or replace, at its option, any product found to be defective in such respects and reported to seller within 90 days of shipment from Seller's location. This warranty shall not apply to any product subjected to misuse, improper processing, alterations, negligence, shipment damage, abnormal conditions of operation/storage, or use in any manner contrary to instructions. Buyer shall not return any product as to which a claim is made without prior authorization of Seller and buyer shall afford Seller prompt and reasonable opportunity to inspect any such products. Seller reserves the right to determine the cause and existence of any defect under this warranty.

SELLER'S OBLIGATIONS ARE LIMITED TO REPLACEMENT OR, AT THE OPTION OF THE SELLER, TO REFUND PER PHOENIX OPTICAL POLYMERS LLC PRICE. IN NO EVENT SHALL SELLER BE LIABLE FOR LOST PROFITS OR GOODWILL, OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COSTS. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

BUYER'S WARRANTIES.

Buyer warrants that the sale and delivery of the Goods to it will not violate any law, regulation, rule, order or restriction of the United States, Foreign Governments or any state or other governmental authority; and Seller will furnish goods only in reliance upon such representation.

RETURNS.

Buyers shall not return any product without prior authorization of Seller, and in accordance with the then current Returns Policy; and Buyer shall afford Seller prompt and reasonable opportunity to inspect any such products. Seller reserves the right to determine the cause and existence of any defect under this warranty. For returns for other than claims, transportation charges are to be prepaid and at the buyer's expense. A restocking charge will be imposed on accepted non-claim returns.

CONFIDENTIAL INFORMATION.

Designs, techniques, methods, specifications, drawings, sketches, processes, product information, formulae, recipes, samples, prototypes, selection of materials, systems and components, plans, financial data (including cost and pricing data) and other manufacturing or business information supplied by Sellers shall remain Seller's property and proprietary information and shall be held in confidence by buyer. Such information shall not be reproduced, used or disclosed to others by buyer without Seller's prior written consent. Confidential information shall not include information buyer can demonstrate: (i) is generally available to the public other than as the result of disclosure by buyer in violation of this Agreement or any other confidentiality obligation; (ii) is legally in buyer's possession at the time of receipt from Seller; or (iii) is obtained by buyer from a third party who is in lawful possession of the information and who has the right to make disclosure thereof, but only if the third party has authorized buyer's use thereof. Immediately upon termination of this agreement, all confidential information together with any copies thereof shall be returned to Seller.

NOTICE.

Any notice shall be given in writing and shall be:

(a) personally delivered, (b) sent by electronic e-mailed or faxed transmission; or (c) sent to the parties at their respective addresses indicated on the attached document by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service.

WAIVER, SETOFF.

No claim or right arising out of a breach of this agreement can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Seller may set off any amount due from buyer against any amount which may become due to buyer hereunder.

CONSEQUENTIAL DAMAGES AND OTHER LIABILITY; INDEMNITY.

Except as otherwise agreed in writing, Seller's liability with respect to the goods and/or services sold hereunder shall be limited to the warranty provided herein, and, with respect to other performance of this contract, shall be limited to the contract price. SELLER SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO GOODS AND/OR SERVICES SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of goods or any associated equipment, cost of capital, cost of substitute goods, facilities or services, down-time, shut-down or slow-down costs, or for any other types of economic loss, or for claims of buyer's customers or any third party for any such damages.

MISCELLANEOUS.

Buyer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorney's fees and other costs of defending any action) which Seller may incur as a result of any claim by buyer or others arising out of or in connection with the goods and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence. Buyer shall not assign this agreement or any rights under this agreement and shall not delegate its duties or obligations under this agreement, without the prior written consent of Seller. Any attempted assignment without such consent shall be void and without legal effect. This contract and these terms and conditions shall constitute the entire agreement between Seller and buyer. THIS CONTRACT AND THESE TERMS AND CONDITIONS SHALL BE GOVERNED BY AND SHALL BE CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF ARIZONA (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THERE ARE NO CONDITIONS AFFECTING THIS AGREEMENT WHICH ARE NOT EXPRESSED HEREIN. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. If the application of any provision, clause or part of this agreement under certain circumstances is held invalid, the remainder of this agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby.