

PURCHASE ORDER TERMS AND CONDITIONS

1. General Terms and Conditions. All purchases of goods (“**Goods**”) from AB Specialty Silicones, LLC (“**Seller**”) shall be governed by the purchase order documents issued by Seller (including specifications and instructions referred to therein), and these Purchase Order Terms and Conditions (collectively the “**Purchase Order**”). If a formal sales agreement is in effect between Buyer and Seller and applicable to such sale (a “**Sale Agreement**”), then any term in the Sales Agreement that conflicts with these terms will apply, and these terms will otherwise apply. These Terms and Conditions constitute an integral part of any offer made by Seller to sell Goods to any buyer of Goods (“**Buyer**”) and shall govern the sale of the Goods. Any additional or different terms or conditions proposed by Buyer in any purchase order or otherwise are hereby rejected.

Buyer’s acceptance of all of the terms and conditions herein is an express condition to the formation of any contract of sale between Buyer and Seller. No order by Buyer, regardless of whether a deposit has been accepted, shall be binding upon Seller until the order has been accepted by an authorized representative of Seller, regardless of Seller’s point of manufacture or point of shipment.

2. Prices. Unless otherwise stated in writing signed by an authorized representative of Seller all prices quoted by Seller are based in U.S. dollars, F.O.B. shipping point, include domestic packaging, and are effective for thirty (30) days from the date of quotation. Transportation shall be by common carrier, at Buyer’s risk and expense, with the charges added to the quoted prices. Should Buyer postpone the delivery date, Seller shall have the right to adjust the price of the undelivered Goods to Seller’s price at the time of shipment. Seller reserves the right to adjust its prices for any Goods scheduled for shipment more than sixty (60) days after Seller’s acceptance of Buyer’s order. All of Seller’s published prices or quoted prices are subject to change without notice.

3. Payment. Payment terms shall be NET 30 from invoice date, unless otherwise formally stated. A late fee or an interest charge of 1½% per month (18% per year), or the maximum allowed by law, may be added to invoices overdue beyond sixty (60) days. Payment of any late charge will not cure or excuse any Buyer default, and Seller’s acceptance of such late charge will not be deemed a waiver of Buyer’s responsibility to pay Seller. Buyer will pay reasonable fees Seller incurs for collecting any overdue payments, including reasonable attorneys’ fees and costs.

4. Taxes. Any sales, use or manufacturer’s tax which may be imposed upon the sale or use of Goods, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this Purchase Order, shall be in addition to the quoted prices and shall be paid by Buyer. If Buyer is exempt from any taxes, Buyer shall furnish to Seller an appropriate tax exemption certificate, in a form acceptable to the taxing authority or authorities having jurisdiction over such tax matters.

5. Delivery, Risk of Loss, and Title. Delivery and completion schedules provided by or agreed to by Seller are estimations only. Delivery shall be complete upon transfer of possession to common carrier, F.O.B. shipping point, whereupon title and all risk of loss, damage or destruction to the Goods shall pass to Buyer. The means of shipment will be at the discretion of Seller. Seller reserves the right to make partial shipments and to submit invoices for partial shipments.

6. Inspection and Rejection of Nonconforming Goods. Buyer shall inspect the Goods within ten (10) days of receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. “**Nonconforming Goods**” means only the following: (i) product shipped is different than identified in Buyer’s purchase order; or (ii) product’s label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods. Buyer acknowledges and agrees that the remedies set forth in this Section 6 are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section 6, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods to Seller.

7. Purchase Price and Security Interest. It is agreed by Buyer and Seller that, as to the Goods which are the subject of any Purchase Order and proceeds thereof, a purchase money security interest shall attach with Seller as secured party, and with respect to Goods which are resold in any form by Buyer, Seller shall be the assignee of any security interest which Buyer retains or obtains in such Goods until Buyer has made payment in full in accordance with the terms hereof. Buyer shall be in default (i) if it fails to make any payment as provided for herein; (ii) if bankruptcy, receivership or insolvency proceedings are instituted by or against Buyer; or (iii) if Buyer makes any assignment for the benefit of creditors. Upon Buyer’s default, Seller shall have all the rights and remedies of a secured creditor as well as those of a seller of goods, under the Uniform Commercial Code and any other applicable law, including but not limited to, the RIGHT TO TAKE POSSESSION of the Goods. Seller may remedy any default and may waive any default without waiving the default remedied or without waiving any prior or subsequent default. Buyer agrees to cooperate fully and assist Seller in perfecting and/or continuing Seller’s security interest and to execute such documents and accomplish such filings and/or recordings thereof as Seller may deem necessary for the protection of Seller’s interest in the Goods. The making of any Purchase Order by Buyer and Seller shall be consummated by their signing thereof and this security interest shall be deemed in full force and effect.

8. Termination and Cancellation. Buyer may, by written notice, withdraw a Purchase Order in whole or in part at any time

prior to Seller's acceptance of the Purchase Order pursuant to Section 1 hereof. If Buyer, by written notice, terminates a Purchase Order in whole or in part subsequent to Seller's acceptance of said Purchase Order, then Buyer shall be liable to the Seller for a termination charge equal to five percent (5%) of the purchase price for the terminated Purchase Order. Any termination of a Purchase Order by Buyer after Seller's acceptance of said Purchase Order is subject to Seller's confirmation of the termination, which confirmation Seller may withhold in its sole and absolute discretion. Seller may cancel all quantities not shipped to Buyer within twelve (12) months of Purchase Order date. In the event that Seller does not ship all quantities because of any action or requisite inaction on the part of Buyer and elects to cancel any quantity not so shipped, Buyer shall be liable for termination charges as provided herein. If in Seller's sole and absolute discretion, Buyer's financial condition does not justify the terms of payment specified herein, Seller may, without any liability to Seller, cancel the Purchase Order or require Buyer to immediately pay for all Goods which have been delivered and pay in advance for all Goods to be delivered.

9. Non-Waiver of Default. In the event of any default by Buyer, Seller may decline to make further shipments. If Seller elects to continue to make shipments, Seller's action shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default.

10. Contingencies. Seller is not liable, either wholly or in part, for nonperformance or a delay in performance due to force majeure or contingencies or causes beyond the reasonable control of Seller, including but not limited to, shortage of labor, fuel, raw material or machinery or technical or yield failure. Seller may, in its sole and absolute discretion, allocate production and deliveries in the event of a shortage of Goods.

11. Limited Warranty. Subject to the limitation of Section 12, Seller warrants, for a period of twelve (12) months from the date of shipment of the Goods ("**Warranty Period**"), title and that all Goods sold hereunder shall conform to Seller's standard specifications for the Goods at the time of delivery, subject to reasonable manufacturing tolerances. THE FOREGOING IS THE SOLE AND EXCLUSIVE WARRANTY AND SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with other substances. Any suggestions made by Seller concerning uses or applications of said Goods reflect Seller's opinion only and Seller makes no warranty of results to be obtained. This warranty does not extend to the process of manufacture nor to the quality of any other components, processes, facilities or equipment which are not supplied by Seller and in connection with which the good is to be used, and the Buyer shall hold Seller harmless from and against any suit, claim or damage, arising from or out of the use of the Goods. Seller shall not be responsible for work done, material furnished or repairs made by others unless agreed to in writing, and reserves the right of doing or supervising any necessary repair work incident to putting Goods in proper operation. Buyer agrees to use reasonable care in the operation and maintenance of Goods provided in accordance with instructions furnished by Seller. The Seller shall not be liable for a breach of the warranty set forth in this Section 11 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective. Notwithstanding the foregoing, the Seller shall not be liable for a breach of the warranty set forth in this Section 11 if: (x) Buyer makes any further use of such Goods after giving such notice; (y) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (z) Buyer alters or repairs such Goods without the prior written consent of Seller. Subject to these requirements, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller. THE REMEDIES SET FORTH IN THIS SECTION 11 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 11.

12. Limitation of Liability. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SALE AND USE OF GOODS, THESE TERMS AND CONDITIONS, AND/OR THE RELEVANT PURCHASE ORDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE GOODS IN RESPECT TO WHICH THE CLAIM IS MADE. The limitation of liability set forth in this Section 12 shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. Use of Goods. Buyer acknowledges and agrees that, with respect to Goods sold to Buyer hereunder, Buyer shall have the sole responsibility to properly use the Goods and to determine and comply with all applicable Federal, state, local and regulated use restrictions and requirements, including, without limitation, the continuing responsibility to ensure that the use of

Goods is in full compliance with all applicable environmental laws and regulations. Buyer further acknowledges and agrees that Seller shall have no responsibility at any time with respect to the foregoing, and agrees to indemnify, defend and hold Seller harmless from and against any and all losses, claims, liabilities and damages (including costs, expenses and reasonable attorneys' fees) incurred by Seller, resulting from any violation by Buyer of this section.

14. Designs and Trade Secrets. Any samples, technical information, trade secrets, specifications, models, data, formulations, processes, and all other proprietary information supplied by Seller to Buyer in connection with the sale of Goods shall remain Seller's property and be held in confidence by Buyer. Such information shall not be reproduced or disclosed to others without Seller's prior written consent in each particular instance.

15. Licenses and Permits. Buyer shall secure and pay for all licenses and permits which Buyer may require to comply fully with all applicable laws, ordinances and regulations in connection with the performance of the Purchase Order including any permits, licenses or other governmental authorization(s) necessary for the exportation or importation of the Goods into the designated country of importation. Buyer shall be responsible for all damages and shall indemnify and save Seller harmless from and against all damages and liability, which may arise out of the failure of Buyer to secure and pay for any such licenses and permits or to comply fully with any and all applicable laws, ordinances and regulations.

16. Legal Compliance. Buyer represents and warrants that in performance of all work under the Purchase Order, Buyer and its agents and subcontractors have complied with or will comply with all applicable federal, state, local, and foreign laws and ordinances including, but not limited to, all export laws, restrictions and regulations of the Department of Commerce or other United States or foreign agency or authority.

17. Indemnification. Buyer will indemnify, defend and hold Seller and affiliates harmless from and against any and all losses, costs, damages, liabilities, claims, expenses (including reasonable legal fees) and the payment of all sums of money owing or incurred (a) by reason of accidents, injuries or damages to persons or property directly or indirectly resulting from Buyer's performance under the Purchase Order.

18. Miscellaneous.

(a) All notices, demands and other communications which may or are required to be given to or made by either party to the other in connection with the Purchase Order shall be in writing (including fax, or other similar writing) and shall be deemed to have been duly given or made (i) if sent by certified mail, return receipt requested, five (5) days after the posting thereof with first class postage attached, (ii) if sent by hand or overnight delivery, upon the delivery thereof, and (iii) if sent by fax, upon confirmation of receipt of such fax, in each case addressed to the business unit president and principal place of business of each party or to such other address as either party may specify from time to time by notice to the other party.

(b) Neither the Purchase Order nor any of the rights, interests or obligations hereunder shall be transferred, assigned or delegated (by operation of law or otherwise) by Buyer without the prior written consent of Seller. Any attempted transfer or assignment of the Purchase Order or any of the rights, interests, duties, or obligations hereunder by Buyer in violation of the terms hereof shall be void and of no force or effect. Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than Buyer and Seller and their permitted assigns, any rights, remedies or other benefits under or by reason of the Purchase Order.

(c) Except as expressly provided herein, the Purchase Order constitutes the complete agreement of the Buyer and Seller with respect to the purchase and sale of Seller Goods and supersedes all prior written or oral agreements or understandings, prior performance, courses of dealing and industry practices. The Purchase Order may not be changed, amended, terminated, augmented, rescinded or discharged (other than by performance), in whole or in part, except by a writing executed by Buyer and Seller which expressly references the Purchase Order.

(d) Any term or provision of the Purchase Order that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(e) The relationship between Buyer and Seller under the Purchase Order is that of buyer and seller, and Buyer shall have no right and shall not attempt to enter into contracts or commitments in the name of or on behalf of Seller or to bind Seller in any respect whatsoever. Nothing herein shall be construed to make Buyer the joint venturer, partner, agent, servant, franchisee or employee of Seller, and Buyer shall not have the power to bind or obligate Seller.

(f) THE PURCHASE ORDER SHALL BE CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS, AND EACH PARTY HERETO SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN ILLINOIS IN ANY ACTION OR PROCEEDING PERMITTED UNDER THE PURCHASE ORDER RELATING TO OR ARISING OUT OF SELLER GOODS OR ANY OFFER OR SALE OF SELLER GOODS.

(g) No modification or waiver of any provision of the Purchase Order will be effective for any purpose unless such modification or waiver is specifically set forth in a writing signed by a procurement representative of the party to be charged with such modification or waiver. No waiver of any right or remedy in respect to any occurrence or event on one occasion will be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.