

**Morgan Advanced Materials Canada Inc.
Terms and Conditions of Sale**

1. Applicability. All shipments, services, sales and quotations between Morgan Advanced Materials Canada Inc., an Ontario corporation (“Morgan” or “us” or “we”), and its Buyer (the “Buyer” or “you”) are subject to these general terms and conditions of sale (these “Terms”). They are, therefore, also valid for all future business transactions between Morgan and Buyer, even in cases where they are not expressly specified or re-agreed upon.
2. Dissenting or Additional Terms. Dissenting or additional terms or conditions of business that may be proposed from time to time by Buyer are not binding upon Morgan, unless they are expressly confirmed by Morgan in writing as replacing the terms and conditions contained herein. The mere acceptance of a purchase order containing such dissenting or additional terms and conditions shall not bind Morgan to the same, and Morgan expressly rejects all of Buyer’s general terms and conditions of business that are opposed to or in addition to these Terms.
3. Oral Terms Not Binding. Agreements, supplements or understandings made by phone or orally that deviate from these Terms are not binding, unless they have been confirmed in writing by the party to be bound.
4. Issuance of Purchase Orders. All quotations are without obligation and are not binding upon Morgan. Buyer will submit to Morgan one or more purchase orders substantially in the form attached hereto as Exhibit A (each, a “Purchase Order”) identifying the products Buyer desires to purchase for sale and distribution, for inventory, or otherwise. Each Purchase Order may include other terms and conditions that are consistent with these Terms or that are necessary to place the Purchase Order, such as billing and shipping information, target delivery dates, the delivery location, quantities, and the Purchase Price, defined below, or charges for the products. Buyer will place Purchase Orders by email, telephone, fax, or mail, and will promptly follow orders placed by telephone with a written Purchase Order.
5. Acceptance of Purchase Orders. Each Purchase Order shall be subject to the acceptance by Morgan in its sole discretion. Morgan will indicate its acceptance of Purchase Orders or alterations to Purchase Orders by providing to Buyer a written acceptance of such Purchase Orders (whether by mail, email, teletype or other means). In the absence of any written acknowledgement or written acceptance of the Purchase Order, shipment of goods ordered shall be deemed acceptance of such Purchase Order.
6. Purchase Order Alteration and Cancellation. Prior to shipment of the products ordered by Buyer, Morgan will accept an alteration to a Purchase Order that: (i) changes a location for delivery; (ii) modifies the quantity or type of products to be delivered; or (iii) corrects typographical or clerical errors. Buyer may cancel a Purchase Order without charge or penalty if Buyer provides Morgan with a written notice of such cancellation at least ninety (90) days prior to the scheduled or anticipated date of shipment of the products specified in such Purchase Order. Except as otherwise provided in this Section 6, a Purchase Order once placed with and accepted by Morgan cannot be cancelled or amended, including any amendment that changes drawings and specifications as to any goods and/or work covered by the Purchase Order except with Morgan’s written consent and upon terms that reflect any changes in price or time for performance and that will indemnify Morgan for all losses incurred by Morgan associated with the Buyer’s amendment or cancellation, including but not limited to the costs already incurred by Morgan in the performance of its contractual duties and any profits that Morgan would have received had the contract been completed.
7. Price and Discounts. Unless otherwise agreed or provided herein, the prices to Buyer of products sold hereunder by Morgan shall be based on the price list established by Morgan from time to time (“Suggested Price List”). Morgan reserves the right to change the Suggested Price List in its sole discretion from time to time. All prices reflected in any order accepted by Morgan or quoted by Morgan shall be on a net basis F.C.A. (*Incoterms 2010*) Morgan’s loading dock. Unless otherwise specified on the face of the Purchase Order, all packaging and cartage charges special containers, packaging, crating, palletizing, applicable taxes and duties, freight, insurance or other incidental expenditures and taxes payable in the country of manufacture shall be paid by Buyer and are deemed excluded from the Purchase Price. All prices are in Canadian Dollars and all payments shall be in Canadian Dollars.
8. Payment. Unless otherwise agreed to in writing by Morgan, payment of the total purchase order price (“Purchase Price”) is due and payable within thirty (30) calendar days from the date of invoice. Time is of the essence with respect to all of Buyer’s payment obligations hereunder. Morgan reserves the right to change any credit terms offered to Buyer at any time, when in Morgan’s opinion, Buyer’s financial condition or previous payment record so warrants. Buyer grants Morgan a continuing security interest in the products purchased by Buyer from Morgan (including the “Collateral” as defined below) and the proceeds thereof. For those products sold to or within the Province of Quebec, Buyer hereby hypothecates in favour of Morgan for the amount of the Purchase Price plus 20%, bearing interest at the rate of 25% per annum, all present and future products purchased by Buyer from Morgan from time to time and the process, fruits and revenues thereof (the “Collateral”). Such security interest and hypothec secure all, present and future, obligations of Buyer to Morgan with respect to products and Collateral bought and sold from Morgan, including without limitation, payment of the total Purchase Price mentioned herein. Such security interest is a purchase money security interest (as the terms “security interest” and “purchase money security interest” are used in the *Personal Property Security Act* (Ontario) and shall be interpreted with similar effect under analogous legislation in force in any other relevant jurisdiction. Buyer agrees that Morgan has all rights of a secured party under any applicable personal property security legislation and at law and in equity, and waives its right to receive from Morgan a copy of any financing or verification statements relating to any registration of a security interest that Morgan may choose to pursue under such legislation. Buyer agrees from time to time to execute such documents as Morgan deems necessary to perfect or render opposable Morgan’s security interest and hypothec.
9. Interest. No products shall be shipped to Buyer if Buyer has an outstanding invoice over ten (10) days past due. All amounts on invoices that are overdue shall bear interest from the due date until the payment is received by Morgan at a rate of interest equal to the lesser of nineteen percent (19%) per annum or the maximum rate permitted by applicable law.
10. Account Information. All payments shall be remitted to Morgan’s account communicated to Buyer from time to time. Morgan shall have the right to change such account from time to time upon a written notice to Buyer.
11. Credit. In the event that Buyer fails to pay any sum Buyer owes as set forth herein, in addition to the interest due Morgan as set forth in Section 9 hereof, Morgan may require Buyer to provide Morgan with such additional security of performance as Morgan deems appropriate, which security may include without limitation: (i) imposition of credit limits; (ii) requiring Buyer to pay for the products prior to Morgan’s acceptance of the Purchase Order for such products or Morgan’s shipment of any products; (iii) requiring Buyer to obtain a letter of credit or like security; (iv) requiring Buyer’s

principal owners or other third parties to guarantee payment personally of any sums Buyer owes Morgan; (v) requiring Buyer to provide Morgan with other collateral or security; and (vi) requiring Buyer to execute such documentation, or to cause designated third parties to execute such documentation, as Morgan deems appropriate to effect the foregoing.

12. Delivery or Performance Dates. Morgan will use commercially reasonable efforts to meet specified delivery or performance dates; however, all terms and dates are estimates only and are not binding, unless a written agreement to the contrary is made. Delays in delivery or performance do not entitle Buyer to cancel any order, refuse any items, or claim damages.

13. Delay Caused by Force Majeure. Even if binding terms or dates are agreed upon, Morgan shall not be liable for damages occasioned by a delay in performance or delivery caused by force majeure or similar circumstances that make delivery or service difficult if not impossible for Morgan. This includes problems caused in whole or in part by an act of God, war, insurrection, civil commotion, strike, flood, fire, earthquake, domestic violence, terrorism, lockout, embargo, lack of water, materials, power, or telephone transmissions specified or reasonably necessary in connection with these Terms, hurricanes, unavoidable casualties, and any other occurrence, event, or condition beyond the reasonable control of Morgan (a "Force Majeure Event"). Morgan shall promptly notify Buyer of such Force Majeure Event. Such circumstances entitle Morgan to postpone delivery by the period of their duration plus a reasonable starting up time or to cancel any Purchase Order or part thereof not yet fulfilled. In the case of a restriction lasting longer than three (3) months, Buyer shall have the right to terminate all or any unshipped part of the Purchase Order not yet filled. Such right of cancellation shall be Buyer's exclusive remedy.

14. Product Shortage, Partial Shipment and Back Orders. Morgan will notify Buyer of product shortages and will use commercially reasonable efforts to fill the open Purchase Orders. Morgan may, on notice to Buyer and with Buyer's consent, make partial shipments of Buyer's orders, which Morgan may invoice separately, and which shipments Buyer will pay for when due. Delay in delivery of any installment will not relieve Buyer of its obligation to accept the remaining deliveries, unless Buyer cancels such shipments as set forth in Section 6 hereof. Morgan will use commercially reasonable efforts to fill all Purchase Orders placed by Buyer but does not guarantee it will have sufficient products to fill all orders in a timely manner. The parties agree that Morgan is not liable for its failure to timely fill all Purchase Orders and for delays in shipment.

15. Title and Risk of Loss; Transportation. Title to and all risks of loss and liability for damages shall pass to Buyer upon delivery by Morgan to a common carrier at the F.C.A. point (i.e., Morgan's loading dock). Buyer shall be responsible for all insurance and transportation charges from the F.C.A. point. Morgan will from time to time and as the Buyer's agent, make all necessary shipping arrangements, and unless the Buyer specifies otherwise in writing, purchase full value insurance for the items while in transit. Unless instructed by Buyer on shipping method, placement of values and carrier, Morgan will use its own discretion thereon. Morgan will invoice Buyer and Buyer agrees to reimburse Morgan for all charges incurred on behalf of Buyer, including insurance, transportation costs and any packaging costs that may result from Buyer specifying a particular mode of transportation. If Morgan delivers the products to Buyer from the F.C.A. point using Morgan's trucks and/or drivers, Morgan does so only as a courtesy and accommodation to Buyer and the terms of sale remain F.C.A. Morgan's loading dock.

16. Insurance During Transit. Buyer shall insure the items for their full value during transit from the F.C.A. point, with such insurance to contain a provision waiving all rights of subrogation against Morgan and its employees, agents, and representatives with respect to losses payable under such policy. Buyer hereby waives and releases Morgan and its employees, agents, and representatives of and from any and all rights of recovery, claim, action or cause of action for any loss or damage that may occur to the products during transit regardless of cause or origin, including the negligence of Morgan or its employees, agents, or representatives, and Buyer acknowledges that the foregoing waiver and release is intended to result in any such loss or damage being borne by the insurance carrier of Buyer, or by Buyer if Buyer fails to obtain and maintain the insurance required hereunder.

17. Drop Shipment; Buyer's Duty to Inspect. From time to time Buyer may request Morgan to drop ship the products directly to the buyers of Buyer. In such event Buyer shall bear all credit risks associated therewith. Buyer (or its buyer in the case of a drop shipment by Morgan to such Buyer) shall inspect the products upon receipt. Failure of Buyer (or its buyer in the case of a drop shipment by Morgan to such buyer) to inspect the products and/or failure to notify Morgan in writing of any noncompliance, shortage or other reason for its rejection of any of such goods within such period as set forth in Section 19 hereof and the specific grounds for rejection shall constitute irrevocable acceptance of such goods. Morgan accepts no responsibility for breakage, damage or losses occurring after delivery by Morgan to the carrier. All claims in such regard should be made direct to the carrier.

18. Nonconforming Products. Any claim that the products are nonconforming will be deemed waived unless such claims are made within thirty (30) days after delivery of the products to Buyer or buyers of Buyer in the case of a drop shipment to such buyers by Morgan. Any nonconforming products supplied by Morgan will be returned to Morgan or disposed of by Buyer or buyers of Buyer at Morgan's request, direction and expense. Morgan shall either substitute conforming products or cancel the order. The foregoing shall be the sole and exclusive remedy of Buyer for nonconforming products. In no event is Buyer entitled to retain payments due Morgan, except upon the written consent of Morgan.

19. Limited Warranty. Morgan warrants that all goods sold hereunder shall be free from defects in material and workmanship and shall conform to Morgan's applicable specifications at the time of their delivery to the F.C.A. point and for a period of ninety (90) days thereafter. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED. Determination of the suitability of the products for the uses and applications contemplated by Buyer shall be the sole responsibility of Buyer. Buyer assumes all risks and liabilities for the results obtained by the use of the products, whether used alone or in combination with other material. Morgan makes no warranty or guaranty with respect to the results to be obtained by the use of the products. Any warranty claims must be made within the warranty period, and any warranty claims not made during the warranty period shall be deemed waived by Buyer.

20. Liability of Morgan. In the event of a warranty claim accepted by Morgan, Morgan shall have the option to either (i) replace the product(s) allegedly failing to comply with such warranty by delivering a like quantity of the product(s) meeting the descriptions and specifications referenced in the Purchase Order for such product(s), or (ii) refund the total Purchase Price for the product(s) allegedly failing to comply with such warranty. The foregoing shall be the sole and exclusive remedy of Buyer for breach of warranty by Morgan. Defective products shall be returned or disposed of as

directed by Morgan. IN NO EVENT SHALL THE LIABILITY OF MORGAN TO BUYER, WHETHER BASED IN CONTRACT, IN TORT OR OTHERWISE, EXCEED THE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH MORGAN'S LIABILITY IS CLAIMED, AND IN NO EVENT WILL MORGAN BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER BASED IN CONTRACT, IN TORT OR OTHERWISE, THAT ARISE IN CONNECTION WITH THE PRODUCTS OR IN CONNECTION WITH EITHER MORGAN'S FAILURE TO DELIVER OR ITS LATE DELIVERY OF THE PRODUCTS (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE PRODUCTS AND LOSS OF PROFITS). Buyer acknowledges that the remedies provided herein are exclusive and in lieu of all other remedies available to Buyer at law or in equity.

21. **Default; Remedies.** If Buyer fails to pay the Purchase Price or other amount herein provided within five (5) days after it is due and payable, or if Buyer fails to observe, keep or perform any other provision of these Terms, or if Buyer ceases doing business as a going concern, or if a petition is filed by or against Buyer under the *Bankruptcy and Insolvency Act* (Canada) or any amendment thereto, or if a receiver is appointed for Buyer or its property, or if Buyer becomes insolvent, makes an assignment for the benefit of creditors, offers a composition or extension of any of its indebtedness, Morgan may deem Buyer to be in default hereunder. If the default is not remedied by Buyer within five (5) days of any written notice, then Morgan or its agent shall have the right to exercise any one or more of the following remedies: (a) to sue for and recover from Buyer an amount equal to the unpaid balance of the Purchase Price and other amounts payable hereunder due and to become due during the term of these Terms; and (b) to enter upon Buyer's premises, with or without notice, court order or other process of law, to take possession of any or all products secured hereunder without demand or notice wherever same may be located. Upon retaking possession of any or all products secured hereunder, Morgan may, at its option sell such products, or any part thereof, to the highest bidder at a public auction or at private sale. All net proceeds of the foregoing shall be applied against amounts owing pursuant to the terms of these Terms after deducting all reasonable costs incurred in connection with such disposition. Buyer hereby waives any and all damages occasioned by such taking of possession. Any said taking of possession shall not constitute a termination of these Terms and shall not relieve Buyer of its original obligations herein unless Morgan expressly so notifies Buyer in writing. Should any legal proceedings be instituted by Morgan to recover any monies due and to become due herein or for the repossession of the products secured hereunder, Buyer shall be liable for and pay for all reasonable legal fees and costs incurred.

22. **Assignment.** Buyer may not assign these Terms without the express prior written consent of Morgan. These Terms shall be binding upon and shall inure to the benefit of Morgan and its successors and assigns, and shall be binding upon and inure to the benefit of Buyer and its permitted assignees.

23. **Entire Agreement.** Except as otherwise expressly provided in a written document signed by Morgan and Buyer, these Terms contain the complete and final agreement between Buyer and Morgan with respect to the subject matter herein contained and supersede all prior agreements and communications between Morgan and Buyer, whether oral or written.

24. **No Implied Waivers.** No modification, limitation, waiver or discharge of these terms or conditions shall bind Morgan unless in writing and signed by an authorized officer, agent, or employee of Morgan. No waiver or failure of Morgan to insist, in one or more instances, on performance by Buyer in strict compliance with any provision of these Terms hereof on any one occasion shall be deemed to be a waiver of the same or of any other right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

25. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been given only if and when (i) personally delivered; (ii) five (5) business days after mailing, postage prepaid, first class air mail; (iii) when delivered (and receipted for) by an express delivery service; or (iv) when first sent by telex, telecopy or other means of instantaneous communication, provided such communication is properly confirmed by personal delivery, mail or an express delivery service as provided above, addressed in each case at the address set forth as the communications address on the Purchase Orders or at such other address as either party may specify from time to time in writing in accordance with this provision.

26. **Governing Law.** These Terms and any agreement resulting from the acceptance of a Purchase Order shall be construed pursuant to the laws of the Province of Ontario (except for the hypothec created hereunder for Collateral sold in or to the Province of Quebec, which shall be governed by the laws of the Province of Quebec) without giving effect to its conflicts of laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply.

27. **Arbitration and Submission to Jurisdiction.** Except in relation to remedies available under Section 21 and actions by Morgan for injunctive or equitable relief, all disputes and claims in respect of or relating to any provision of this Agreement, this Agreement's termination, or relating to or arising out of the terms and conditions of this Agreement, (including, without limitation, any claims or disputes regarding any provision of these Terms, any specification, standard or operating procedure or any obligation of Morgan or of Buyer deemed to be illegal or otherwise unenforceable or voidable under law, ordinance or ruling) shall be settled by arbitration in Toronto, Ontario. The Parties shall agree on a single arbitrator, who shall determine, after consultation with the Parties, on the procedure and substantive law of the arbitration. If the parties are unable to agree on an arbitrator, the arbitrator shall be chosen by the Ontario Superior Court of Justice. All issues, disputes or claims under the arbitration shall be decided by the arbitrator. Each Party consents to the exclusive jurisdiction of the Superior Court of Justice for purposes of enforcing this provision, and for any request for interlocutory injunctive relief, or such other provisional relief that is necessary or appropriate, prior to the retainer or designation of the arbitrator. Following the retainer or designation of the arbitrator, the arbitrator shall have exclusive jurisdiction to award interlocutory injunctive or provisional relief. All awards of the arbitration shall be binding and non-appealable except as permitted by law. Any judgment including judgment upon the award of the arbitrator may be entered in any superior Court having jurisdiction thereof. The arbitration shall take place at a time noticed by the arbitrator regardless of whether one of the parties fails or refuses to participate. The arbitrator may award costs (including lawyer's fees and disbursements) in connection with the arbitration proceeding in addition to any other relief that may be granted.

28. **Severability.** In case any terms or conditions contained herein should be or become invalid or unenforceable under applicable law, such terms and conditions shall be deemed to be severable from the remainder of these Terms and shall not cause the invalidity or unenforceability of the remainder of these Terms.

29. **Section References and Headings.** Any reference in these Terms to a section or subsection shall be deemed to include a reference to any subsidiary sections whenever the context requires. The headings are for convenience only and are not to be used in the construction or interpretation of these Terms.

30. Compliance with Law. Buyer and Morgan shall comply with all applicable local, provincial and federal laws, order, rules and regulations. Buyer represents and warrants to Morgan that it is, and shall continue to be, in compliance with all applicable export controls of the Canadian Government.

31. Indemnity. Buyer agrees to indemnify and hold Morgan, its officers, directors, employees and agents, harmless from and against all liability, loss, damage, costs and expenses including, but not limited to, costs and expenses of litigation and reasonable legal fees, that Morgan hereafter may incur or that Morgan may reimburse to a third party as the result of any claim, action or right of action, at law or in equity, arising out of (A) Buyer's non-compliance or breach of these Terms and any representation or warranty contained herein; (B) any infringement or alleged infringement of any license, patent, copyright or any other intellectual property right; or (C) any injury (including death) to any person or damage to any property occurring as a result of, or caused in whole or in part by, acts or omissions of Buyer or its agents, officers, directors, employees, any subcontractor or its employees, or any person, firm or corporation employed or engaged by Buyer. Buyer hereby waives and releases Morgan from any and all rights of recovery, claims, actions or causes of action that Buyer may have against Morgan with respect to those matters that Buyer has agreed to indemnify Morgan hereunder. Buyer shall not be liable to Morgan for loss, damage, costs and expenses which are the direct result of the gross negligence or intentional conduct of Morgan.

32. Language. The parties have agreed that this Agreement be drafted in English. Les parties ont convenu à ce que ce Contrat soit rédigé en anglais.

33. Receipt of Terms. Buyer acknowledges receipt of a true copy of these Terms.



EXHIBIT A
PURCHASE ORDER

BUYER: _____ **PURCHASE ORDER** _____

Phone: _____ Fax: _____

Vendor Number: _____

PO Date: _____

SELLER: MORGAN ADVANCED MATERIALS CANADA INC. 1185 WALKERS LINE BURLINGTON, ONTARIO L7M 1L1	SHIP TO	
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SHIP COLLECT VIA: _____

F.C.A.
SHIPPING POINT

ITEM	QTY	U/M	DESCRIPTION	TARGET DELIVERY DATE	UNIT PRICE
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SHIPPING INSTRUCTIONS:

This Purchase Order is subject to the Morgan Advanced Materials Canada Inc. Terms and Conditions of Sale, which are incorporated into this Purchase Order by reference. By executing this Purchase Order, the Buyer identified above represents and warrants to Morgan that it has received and read such Terms and Conditions and that it understands and agrees to be bound by the terms and conditions contained therein.

BUYER: _____

Accepted as of this _____ day of _____, 20____ .
MORGAN ADVANCED MATERIALS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title: