



Conditions of Sale
Applicable to Export Sales
Momentive Performance Materials Quartz, Inc.

All orders received and all sales made by Momentive Performance Materials Quartz, Inc. (herein called "Company") are expressly conditioned upon the following Conditions of Sale. Any additional or different terms (except additional provisions regarding shipping instructions), whether or not materially different, set forth in any purchase order or other communication from Buyer are objected to and shall not be binding upon Company unless specifically accepted in writing by an authorized representative of Company.

I. PURCHASE PRICE

Unless otherwise stated in writing by Company, prices, terms of payment and pricing policies will be those set forth in Company's pricing policies and published price schedules in effect at the time of shipment.

II. DELIVERY, TITLE AND RISK OF LOSS

A. Company shall ship the products to Buyer FOB Company's factory. Partial shipments shall be permitted. Upon shipment title to the products and all risk of loss or damage shall transfer to Buyer. Shipment dates are approximate and are dependent upon (i) prompt receipt by Company of all information necessary to permit Company to proceed with work immediately and without interruption, (ii) Buyer's compliance with payment terms and (iii) such evidence as Company may request that any required Export or Import license has been issued.

B. If any part of the products cannot be shipped when ready due to any cause referred to in the "Excusable Delays" Article hereunder, Company may place such products in storage. In such event (1) Company's shipment obligations shall be deemed fulfilled and title and all risk of loss or damage shall thereupon pass to Buyer, if it has not already passed, (2) any accounts otherwise payable to Company upon shipment shall be payable upon presentation of Company's invoices and certification as to such cause, and (3) all expenses incurred by Company such as for preparation for and placement into storage, handling, storage inspection, preservation and insurance, shall be payable by Buyer upon submission of Company's invoice.

III. EXPORT SHIPMENT

As a service to Buyer, Company, upon Buyer's request and Company's written agreement, shall arrange for export shipment on behalf of Buyer. Buyer shall pay Company for all fees and expenses including, but not limited in those covering preparation of Export documents, export tracing, freight; storage and Warehouse to Warehouse including war risk insurance, upon submission of Company's invoices. Company shall then also apply for any required Export License. In performing such service, Company will comply with any reasonable instructions of Buyer or, in the absence thereof, shall act according to its best judgment.

IV. GOVERNMENTAL AUTHORIZATIONS

A. Buyer shall be responsible for the timely obtaining of any required authorization, such as an Export License, Import License, Exchange Permit or any other governmental authorization, even though any such authorization may be applied for by Company. Buyer and Company shall assist each other in every manner reasonably possible in securing such authorizations as may be required. Company shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed and Buyer shall not be relieved thereby of its obligations to pay Company for its work.

B. All sales hereunder shall at all times be subject to the export control laws and regulations of the United States Government and any amendments hereof. Buyer agrees that it shall not make any disposition by way of transshipment, re-export, diversion or otherwise, except as said laws and regulations may expressly permit of US origin goods purchased from Company other than in and to the ultimate country of destination specified on Buyer's order and be declared not the country of ultimate destination on Company's invoices.

V. EXCUSABLE DELAYS

A. Company shall not be liable for delays in delivery or performance or for failure to manufacture due to (i) causes beyond its reasonable control, (ii) acts of God, acts of Buyer, acts of civil or military authority, governmental priorities, strikes or other labor disturbances, floods, epidemics, war, riots, delays in transportation or car shortages, (iii) inability on account of a cause

beyond its reasonable control to obtain necessary labor, materials, or manufacturing facilities. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

B. If delay resulting from any of the foregoing causes extends for more than 60 days and the parties have not agreed upon a revised backup for continuing the work at the end of the delay, including adjustment of the price, then either party upon 30 days written notice, may terminate the order in respect to the unexecuted portion of the work whereupon Buyer shall pay Company its termination charges.

VI. PAYMENT

A. Buyer shall pay Company in U.S. dollars upon presentation of invoices for each shipment. Unless otherwise agreed in writing, payment shall be made through the medium of a letter of credit to be established within 15 days after acceptance of the order. Such letter of credit shall be in favor of and acceptable to Company, be irrevocable and issued, or confirmed, by a New York Bank provide for pro rate payments on partial deliveries FOB Company's point of shipment, and for the payment of and termination charges. All banking charges, both domestic and foreign, shall be paid by Buyer.

B. If Company cannot make delivery as scheduled due to any cause referred to in "Excusable Delays" Article, and amounts otherwise payable to Company upon delivery shall be payable upon readiness for delivery against submission of Company's invoices and its certifications as in such cause.

VII. TAXES

A. Unless otherwise stated, Company's process do not include sales, use, excise, value added or similar taxes. Consequently, in addition to the prices specified herein, the amounts of any such tax applicable to the sale of the products hereunder shall be paid by Buyer or in lieu thereof Buyer shall provide Company with a tax exemption certificate acceptable to the taxing authorities.

B. Any taxes including income, stamp, and turnover taxes, duties, fees, charges or assessments of any nature levied by any governmental authority other than of the U.S.A. in connection with this transaction, whether levied against Buyer, against Company or its employees or against any of Company's subcontractors or their employees, or otherwise, shall be for Buyer's account and shall be paid directly by Buyer in the governmental authority concerned. If Company is required by law or otherwise to pay any such levy and for fines, penalties or assessments in the first instance, or as a result of Buyer's failure to comply with any applicable laws or regulations governing the payment of such levies by Buyer, the amount of any payments as made by Company shall be reimbursed by Buyer to Company upon submission of Company's invoices.

VIII. WARRANTY

Company warrants that each product to be delivered hereunder will conform to Company's applicable specifications and be free from defects in material or workmanship. The foregoing warranties are exclusive and in lieu of all other warranties, (except the warranty of title), whether written, oral, implied or statutory. **NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY.** The conditions of any test shall be mutually agreed upon, and Company shall be notified of, and may be represented at, all tests that may be made. If any failure to conform to the foregoing warranties appears within three months from date of shipment (hereinafter referred to as the Liability Period), Buyer shall promptly notify Company thereof and make the affected products available to Company and Company shall then, at its option, either correct the defect or defects by making a replacement of the product at Buyer's plant or issue an appropriate credit. The foregoing shall constitute the Buyer's exclusive remedies for claims (except as to title or patent infringement) based on defects in or failure of products whether the claim is in contract or tort (including negligence) and however instituted.

NOTE: Where products have limited life or may deteriorate through age or other factor such as improper storage, or where industry accepted visual



imperfections exist, such limited life, or deterioration, or imperfection is not a defect in material or workmanship or a failure to conform to specification as contemplated herein. Such products are normally so labeled, or identified in published data, or accompanied by cautionary notice.

It is understood that any defective product will not be returned until authorized in advance by Company. Returned products should be intact in form as shipped and must retain Company's identity.

IX. PATENTS

Buyer shall hold Company harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications or instructions.

Except as otherwise provided in the preceding sentence, Company shall defend any suit or proceeding brought against Buyer so far as based on a claim that any part thereof, furnished under this agreement constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Company's expense) for the defense of same, and Company shall pay all damages and costs awarded therein against Buyer. In case said product, or any part thereof, is in such suit held to constitute infringement and the use of said product or part is enjoined, Company shall, at its option and at its own expense, either procure for Buyer the right to continue using said product or part; or replace same with non-infringing products; or modify it so it becomes non-infringing; or remove said product and refund the purchase price and the transportation costs thereof. The foregoing states the entire liability of Company for patent infringement by the said products or any part thereof.

Company shall not be liable for any costs or damages incurred by Buyer as a result of any suit or proceeding brought against Buyer so far as based on claims (a) that use of any product, or any part thereof, furnished hereunder, in combination with products not supplied by Company or (b) that a manufacturing or other process utilizing any product, or any part thereof, furnished hereunder, constitute either direct or contributory infringement of any patent of the United States.

The sale of products by Company does not convey any license, by implication, or otherwise, under patent claims covering (a) combinations of said products with other devices or elements or (b) a process or machine in connection with which they may be used.

X. LIMITATION OF LIABILITY

In no event, whether as a result of breach of contract, warranty, tort (including negligence), failure of a remedy to accomplish its purpose, or otherwise, shall Company be liable for any incidental or consequential damages including, but not limited to, loss of profits or revenues, loss of use of the product, damage to associated equipment, downtime of plant or equipment, cost of substitute equipment or products, or claims of Buyer's customers for such damage.

Except as provided below with respect to patent infringement, the liability of Company on any claim of any kind, whether based upon breach of contract, warranty, tort (including negligence) or otherwise, for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from any product furnished hereunder, shall in no event exceed the price of the product which gives rise to the claim. Except as to title, all such liability shall terminate upon the expiration of the Liability Period specified in the section entitled "Warranty".

If Company furnishes Buyer with advice or other assistance which concerns any product supplied hereunder or any equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject Company to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

The invalidity, in whole or part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this section.

XI. CANCELLATION

Buyer may not cancel its order after shipment from Company's factory or warehouse. Buyer may cancel its order prior to shipment only upon written notice and payment of Company's cancellation charges which shall include lost profits and all expenses incurred by Company in connection with the cancelled order.

If, in the judgment of Company, the financial condition of Buyer does not justify continuance of production or delivery on the terms of payment originally specified, Company may require full or partial payment in advance, and in the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against buyer under bankruptcy or insolvency laws, Company shall be entitled to cancel any order or part thereof then outstanding and shall receive reimbursement for its cancellation charges.

XII. VARIATION

Unless otherwise specified in writing, any variation over or under in quantities shipped not exceeding 10% of the quantities ordered shall constitute compliance with the order and the unit price will continue to apply.

XIII. GENERAL

Any order resulting herefrom shall in all respects be construed and be given legal effect in conformity with the law of the State of New York, U.S.A.

When spools, reels, drums, containers, or other devices for shipping are charged separately on the invoice, credit will be allowed at the deposit amounts charged when such items are returned to Company in good condition, return transportation prepaid, within six months after receipt to Buyer and retain Company's identification. All items ordered will be packaged accordingly to Company's standards. Special packaging at request of Buyer may be subject to additional charges.

Buyer shall not assign its order or any interest therein or any rights hereunder without the written consent of Company, and any such assignment shall be void.

When tooling and engineering service charges are billed separately on the invoice, such billing or payment therefore shall not imply ownership of the tools to Buyer. Tools shall always remain the property of the Company.

Any representation, warranty, course of dealing, or trade usage not contained or referenced herein will not be binding upon Company. No change, modification, act of resend in, or waiver of these Conditions of Sale shall be binding upon Company unless made in writing and signed on its behalf by its Manager, Marketing and Sales.

Any products delivered by Company hereunder will be produced in compliance with the Fair Labor Standards Act of 1938 as amended and applicable.

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