

## **STANDARD TERMS AND CONDITIONS OF SALE**

### **1. PAYMENT**

- a. Checks and other forms of payment (individually and collectively, “Payment”) are accepted subject to collection, and the date of collection shall be deemed the date of Payment. Any Payment that may be received from “Buyer”, the person, firm or company named upon Buyer’s purchase order and/or Mississippi Polymers, Inc.’s (“Seller”) invoice, may be applied against any obligation owing by Buyer, regardless of any statement appearing on or referring to such Payment or transmittal, all without discharging Buyer’s liability for any additional amounts owing; and the acceptance of such Payment and/or transmittal shall not constitute a waiver of Seller’s right to pursue the collection of any remaining balance.
- b. All invoices are payable at or before their due dates and no late payments are permitted. Late payments accepted by Seller shall be subject to a late charge of two percent (2%) per month or the maximum legal rate of interest if lower. Should Buyer fail to make any payment required hereunder, Seller may declare all outstanding bills of Buyer immediately due and payable, Buyer remaining liable for damages. If all merchandise has not been delivered to Buyer, Seller may sell off, for Buyer’s account, at public or private sale, any or all undelivered merchandise. Notwithstanding, Buyer shall remain liable for the expenses of such sale and any deficiency in the price received as compared with the price set forth upon Seller’s invoice.
- c. Should any dispute arise with respect to the merchandise covered by any invoice rendered, Buyer shall nevertheless pay all invoices covering merchandise not in dispute, without offset.
- d. For undelivered orders, prices may be changed by Seller at any time upon written communication to Buyer. The effective date for any such price change will be specified in writing, and in general, unless extraordinary circumstances exist, the effective date shall be no less than thirty (30) days from the date of such written communication.
- e. Any property of Buyer, including any company affiliated with Buyer, at any time in the possession of Seller, including any company affiliated with Seller, including but not limited to, merchandise billed and held (whether paid for or not) shall be deemed security for Buyer’s obligations hereunder, and should Buyer, including any company affiliated with Buyer, be in default of any of its obligations under this invoice or any other invoice with the Seller, including any company affiliated with the Seller, such property may be sold by Seller at public or private sale, with Buyer remaining liable for the expenses of such sale and any deficiency in the price received Seller as compared with the invoice price.

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## 2. **CREDIT**

Seller may at its sole discretion, at any time and from time to time, change the terms of credit extended to Buyer, if any, and require payment in cash before shipment, and/or require anticipated payment of any or all amounts due or those about to become due.

## 3. **DELIVERIES**

- a. Subject to Seller's right of stoppage in transit, delivery of merchandise to a carrier shall constitute delivery to Buyer, and title and risk of loss shall thereupon pass to Buyer. Where merchandise is held in accordance with Buyer's instructions, delivery of Buyer's instructions shall be considered the date of delivery. Where no shipping instructions have been supplied by Buyer, the mailing of an invoice shall constitute delivery, and title and risk of loss shall thereupon pass to the Buyer.
- b. All freight, express and delivery charges, unless the face of invoice shows "freight prepaid", shall be paid as a separate item by Buyer.

## 4. **WARRANTIES**

- a. Seller warrants that merchandise delivered hereunder shall conform with the description on the face of this invoice. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY EXCLUDED in particular, Seller makes NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE MERCHANDISE OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE.
- b. Seller shall not be liable for normal manufacturing defects, for customary variations from specifications, or for any imperfections inherent in the fiber, fabric or processes used. The physical or chemical characteristics or qualities are not guaranteed unless and except to the extent specifically provided for herein. Seller does not guarantee exact matching of color or shade, resistance to light, or water, or suitability for further processing in any case, Seller shall not be liable for any damages that result from improper laying up of the merchandise or from merchandise used in white trim or color combinations, and Buyer assumes all responsibility for use of the merchandise sold herein in conjunction or combination with any other merchandise.
- c. Seller and Buyer acknowledge and agree that the merchandise which is the subject hereof is not, in whole or in part, "consumer goods".
- d. Buyer has chosen the merchandise which is the subject hereof without reliance upon advice from Seller or anyone directly or indirectly related to Seller with regard to the suitability or fitness of the merchandise for any particular use or purpose.

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## **5. CLAIMS**

- a. Claims that merchandise are defective or non-conforming must be asserted by Buyer in timely fashion, but in no event more than ninety (90) days from receipt of merchandise. Claims must be asserted by written notice to Seller, by Mail, Fax or Email, acknowledgement of delivery requested. Samples of merchandise claimed to be defective must be delivered to Seller within ten (10) days of receipt of notice of defect. Seller, after examination of the sample, shall authorize a return if it deems the merchandise defective. Merchandise returned without authorization shall be rejected and all costs assessed to Buyer. All returns must be authorized in advance by way of Returned Goods Authorization number. Buyer agrees to make any and all tests necessary to determine whether the merchandise is satisfactory for its purpose prior to processing or cutting. Buyer agrees that the cutting or processing in any way of the merchandise shall constitute unconditional acceptance thereof, and a waiver of any and all claims relating thereto. Decision as to non-conformance and defectiveness shall be at Seller's sole discretion and determination.
- b. Claims of late delivery are barred, and Seller accepts no liability for such claims.
- c. Good merchandise returns are not accepted unless Buyer has received prior written notification authorized by an officer of the Seller. Acceptance on one occasion does not create any obligation by Seller to accept such goods on any other occasion. Acceptance of non-defective, conforming goods shall be totally in Seller's sole discretion. Returns of conforming, non-defective goods shall be at Buyer's sole cost.

## **6. LIMITS OF SELLER'S LIABILITY**

- a. Seller shall not have any liability whatsoever with respect to merchandise claimed to be defective unless within ten (10) days after Buyer's claim of defects, Seller receives representative samples of the merchandise claimed to be defective and an opportunity to examine, at a place convenient to Seller, all of the merchandise claimed to be defective. Thereafter, Seller may within thirty (30) days replace the merchandise claimed to be defective and such replacement shall bar any claims by Buyer with respect to the original merchandise. If Seller does not replace merchandise claimed to be defective, Seller's liability shall not exceed the invoice price of the merchandise claimed to be defective less the fair market value on the date of delivery of the merchandise actually delivered. Seller and Buyer agree that same is, and will be, an appropriate and satisfactory remedy.
- b. BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF PROFIT, OVERHEAD, INCREASED OVERHEAD, LOSS OF SALES, PROMOTIONAL OR MANUFACTURING EXPENSES, INJURY TO REPUTATION, LOSS OF CUSTOMERS, REDUCTION OF CUSTOMERS OR ORDERS, GENERALLY OR WITH SPECIFIC CUSTOMERS. LIKEWISE, SELLER SHALL NOT BE LIABLE FOR PUNITIVE OR EXEMPLARY DAMAGES. BUYER

**KNOWINGLY AND VOLUNTARILY WAIVES ALL RIGHTS FOR RECOVERY WITH RESPECT TO THE ABOVE CATEGORIES OF DAMAGES.**

- c. The inclusion of flame or fire resistance tests or codes, if any, in the description or requirements of these products is intended only for comparative purposes to show relative difficulty of ignition and whether it is comparatively difficult to propagate flame beyond the area exposed to the ignition source under controlled laboratory conditions. Reference to such tests is not intended to indicate whether these products will resist flame propagation under fire exposure in end uses or if used in a manner which differs from the test conditions. By inclusion of or reference to flame or fire resistance, if any, tests or codes hereon, Seller makes no warranties, express or implied, that products will conform to such tests in end uses or under actual use conditions, and Seller shall have no liability for any loss or damage resulting from or arising out of the nonconformance of products to such tests or codes under actual end use conditions.
- d. Should Buyer directly or indirectly request any form of assistance, including, but not limited to technical, Seller may, at its option, furnish such assistance and information as it has available, or may develop, with respect to the manufacturing, converting, application, use and regulation of the product(s) sold by, or contemplated to be sold by, Seller to Buyer. Buyer should not rely on any such technical assistance and information, if provided, for specific applications or regulatory compliance since, although Seller, if Seller chooses to furnish assistance and/or information, shall only furnish such assistance and/or information as it believes to be reliable, results will vary with processing and other conditions outside of the direct control of Seller. Accordingly, such information and assistance is given and accepted, if given, at Buyer's risk and confirmation of its validity and suitability in particular cases should be obtained independently by Buyer, AND BUYER ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED IN RELIANCE THEREON. SELLER SHALL NOT HAVE OR INCUR ANY LIABILITY IN CONNECTION WITH SUCH ASSISTANCE OR INFORMATION, IF ANY, WHETHER RESULTING FROM NEGLIGENCE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO INFORMATION CONTAINED IN SELLER'S PRODUCT DATA SHEETS.

**7. DESIGN PROTECTION**

- a. No rights in the patterns, styles, designs, trademarks, copyrights, patents, and all other intellectual property of any nature whatsoever inherent in or attached to the merchandise delivered hereunder shall pass to Buyer except as an integral part of the merchandise and Buyer agrees not to reproduce or cause to be reproduced, either directly or indirectly any such intellectual property. Any use of Seller's proprietary names, designs, trademarks, copyrights, etc. that Buyer may use in advertising or promoting the merchandise covered hereunder shall disclose and prominently display Seller's ownership of such names, designs, trademarks, copyrights, etc. in manner and form satisfactory to Seller. NO OTHER USE OF SELLER'S INTELLECTUAL PROPERTY SHALL BE MADE BY BUYER WITHOUT THE SPECIFIC WRITTEN AUTHORIZATION BY AN OFFICER OF SELLER.

- b. If Seller agrees to confine any patterns or designs to Buyer, which agreement must be in writing, Seller shall be responsible only for ordinary and reasonable care in confining such merchandise to the purpose specified, and unless otherwise expressly provided in writing, patterns and designs confined to Buyer may be sold by Seller to the export trade and to domestic customers who do not compete with Buyer.

## **8. ARBITRATION**

- a. The transaction(s) contemplated hereby and any questions concerning the interpretation and enforcement of this agreement shall be governed by the internal laws of the State of Mississippi, without reference to any conflict of law rules which might call for the application of the law of another state. The parties hereto agree and consent that any and all issues pertaining directly or indirectly to this agreement, and including but not limited to their relationship, shall be resolved through mandatory arbitration through the American Arbitration Association unless otherwise agreed by the parties. In connection therewith, SELLER AND BUYER WAIVE THE RIGHT TO TRIAL BY JURY, and agree that the sole and only venue of arbitration shall be Alcorn County, Mississippi. Any aspect of arbitration requiring any court involvement, including recordation, filing, and enforcement of the arbitration results or award shall be solely and only through the Circuit Court of Alcorn County, Mississippi or the United States District Court for the Northern District of Mississippi as well as the appellate courts that handle appeals from the Circuit Court of Alcorn County, Mississippi and/or the United States District Court for the Northern District of Mississippi.
- b. Notwithstanding any claim(s) Buyer or Seller might otherwise be entitled to assert against the other, the parties shall be barred from instituting arbitration proceedings or pursuing any remedies at law or otherwise unless arbitration proceedings are instituted within one (1) year after the claimed breach occurred.

## **9. CANCELLATION**

- a. To cancel an order for any reason (including delay in delivery), Buyer must give Seller five (5) days written notice of its intent to cancel; if Seller delivers goods before the five (5) day period elapses, Buyer has an obligation to accept and pay for the goods. However, Seller disclaims all liability for late delivery or failure to deliver caused by circumstances beyond Seller's reasonable control, such as, but not limited to, breakdowns, strikes, riots, lockouts, fires, natural disasters, and governmental limitations on delivery.
- b. The offer by Seller to sell merchandise to Buyer is made on the terms and conditions contained herein and acceptance of the merchandise by Buyer is acceptance of such terms and conditions; and it is the express intent of the parties to limit acceptance to the terms and conditions contained herein. Further, the parties agree that these terms and conditions, as contained herein and incorporated by reference upon Seller's invoice, shall govern the rights of Buyer and Seller even if Buyer incorporates other terms and conditions in any Buyer document(s) pertaining to this transaction, on Buyer's website or otherwise, it being



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the intent of the parties that the terms and conditions contained herein shall cancel any and all terms and conditions to the contrary contained on any Buyer document, on Buyer's website or otherwise, and all issues regarding disparity in terms and condition between/among documents shall be resolved on the premise that the terms and conditions contained herein shall govern.