



## Conditions of Sale Applicable to Sales in the United States 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.

### 1. 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.

### 2. 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 revenue, 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.

### 3. 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, estoppel, 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.

### 4. DELIVERY, TITLE AND RISK OF LOSS

Delivery Dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise specifically specified by Company, delivery will be made and title will pass F.O.B. point of shipment. Unless otherwise specified in the Company's Price Schedules in effect at the time of shipment, transportation expenses and risk of loss or damage are the responsibility of the customer. Company shall ship products as it deems appropriate unless otherwise instructed in writing by Buyer.

### 5. EXCUSABLE DELAYS

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.

### 6. FINANCIAL CONDITIONS AND PAYMENTS

Any order for products by Buyer shall constitute a representation that Buyer is solvent. If, in the judgment of Company, the financial condition of Buyer at any times does not justify continuance of production or shipment on the terms of payment originally specified, Company may require full or partial payments in advance. In the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under the bankruptcy of insolvency laws, Company shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges. Company's rights under this provision are in addition to all rights available to it at law or in equity.

Except to the extent otherwise specified by Company, pro rata payments shall become due without setoff as shipments are made. If Company consents to delay shipments after completion of any product, payment shall become due on the date when Company is prepared to make shipment. In the event of any such delay, title shall pass and the products shall be held at Buyer's risk and expense.

### 7. SECURITY INTEREST

Buyer hereby grants to Company a security interest in all products sold hereunder until all payments shall have been made in full in cash by Buyer. Buyer agrees to execute any financing statements and to take any other steps as may be requested by Company to perfect such security interest.

### 8. SALES AND SIMILAR TAXES

Unless otherwise stated in writing, Company's prices do not include sales, use, excise, or similar taxes.

Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise, or other similar 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.

### 9. 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.

### 10. 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.

### 11. 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.

### 12. GENERAL

All items ordered will be packaged according 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, rescission, 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.

The validity, performance and all matters relating to the interpretation and effect of this agreement and any amendment hereto shall be governed by the law of the State of Ohio.