ITW Performance Polymers

Bay 150 | Shannon Industrial Estate | Shannon | County Clare | Ireland | T: +353 61 771 500 | www.itwperformancepolymers.com

Terms of Sale
Interpretation

Date: 01.03.2015

1. THE DEFINITIONS AND RULES OF INTERPRETATION IN THIS CONDITION APPLY IN THE CONDITIONS.

Buyer:	the person, firm or company who purchases the Goods from the Company.
Company:	ITW Performance Polymers, A Division of ITW Ireland (Company number 58156, registered Dublin, Ireland.)
Conditions:	means these conditions or any special conditions notified by the Company to the Buyer in writing.
Contract:	any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating the Conditions.
Delivery Point	the place where delivery of the Goods is to take place under condition 4.1.
Goods:	any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

2. APPLICATION OF TERMS

2.1. Subject to any variation under condition 2.2 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) and any references to any conditions of the Buyer in the Contract shall not imply that they are incorporated into the Contract.

2.2. These conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract provided that nothing in these Conditions shall operate to limit or exclude any liability for fraud or fraudulent misstatement.

2.3. Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to the Conditions.

2.4. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company.

2.5. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.6. Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgment of order to the Buyer.

3. DESCRIPTION

3.1. The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1. Unless otherwise notified to the Buyer in writing delivery of the Goods shall take place at the Company's place of business: Bay 150 Shannon Industrial Estate, Shannon, County Clare, Ireland.

4.2. The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3. Any dates specified by the Company for delivery of the Goods shall not be made of the essence.

4.4. Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Good (howsoever caused), nor shall any delay entitle the Buyer to terminate or rescind the Contract.

4.5. If for any reason the Buyer fails to accept delivery of any of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods shall pass to the Buyer

(b) the Goods shall be deemed to have been delivered;

(c) and the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6. If 30 days after the Company has notified the Buyer that the Goods are ready for delivery the Buyer has not taken physical delivery of them, the Company can resell or otherwise dispose of part or all of the Goods and charge the Buyer for all costs and expenses incurred in storing and reselling the Goods.

5. CARRIAGE

5.1. Goods are supplied on a strictly FCA Shannon basis in accordance with the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date of the Contract unless expressly agreed in writing and signed by an authorised signatory of the Company.

5.2. Where expressly agreed CPT 'Named place of destination' in accordance with the International rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date of the Contract may be used in place **OF FCA SHANNON.** Delivery will take place at the named point in 5.3 and the company will contract for the carriage only to the named place of **DESTINATION.**

5.3. Delivery takes place at the company's premises, Bay 150 Shannon Industrial Estate, Shannon, Co. Clare, Ireland.

5.4. Where agreement to arrange carriage is made in writing the Company does not guarantee the services of any independent carrier or the timescales for transportation of the Goods to the Buyer's premises.

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6. LATE AND NON-DELIVERY

6.1. The Buyer must include any required delivery dates and delivery lead times in its offer to purchase the Goods. No delivery date or lead time provided by the Buyer shall be binding unless the Company specifically agrees otherwise in writing.

6.2. The Company reserves the right to vary any delivery lead times and/or delivery deadlines given by the Company to the Buyer, including where the Contract is amended. For the avoidance of doubt any delivery date or lead time provided by the Company shall be an estimate only and shall not be binding.

6.3. Time of delivery shall not be of the essence.

6.4. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure event or the Buyer's failure to provide the Company with all information and instructions that the Company requires in order to fulfill the Contract. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

6.5. The Company shall not be liable for any non-delivery of Goods (howsoever caused) unless the Buyer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.

6.6. Any liability of the Company for non-delivery of the Goods shall, at the option of the Company, be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. RISK/TITLE

7.1. The Goods are at the risk of the Buyer from the time of delivery.

7.2. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of any Contract.

7.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee;

(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

(c) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks.

7.4. The Buyer may resell the Goods before ownership has passed to it on the condition that any sale shall be effected in the ordinary course of the Buyer's business at full market value and any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

7.5. The Buyer's right to possession of the Goods shall terminate immediately, before the title to the Goods has passed to Buyer, if:

(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or administrative receiver or examiner appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an examiner of the Buyer or notice of intention to petition to appoint an examiner is given by the Buyer or its directors or by a creditor, or contingent or prospective creditor (including an employee) of the Buyer or members of the Buyer, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 214 of the Companies Act 1963 (as amended) or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

7.6. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7.8. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition shall remain in effect.

8. PRICE

8.1. Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

8.2. The price for the Goods shall be exclusive of any value added tax and (where applicable) all costs or charges in relation to the Company importing the Goods, packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

9. PAYMENT

9.1. Subject to condition 9.4, payment of the price for the Goods is due in the invoice currency and within the agreed credit terms of the account on setup.

9.2. Time for payment shall be of the essence.

9.3. No payment shall be deemed to have been received until the Company has received cleared funds.

9.4. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

9.5. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.6. If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Company's Bank, accruing on a daily basis until payment is made, whether before or after any judgment.

10. QUALITY

10.1. The Company warrants that (subject to the other provisions of the Conditions) on delivery the Goods shall:

(a) be of merchantable quality within the meaning of the Sale of Goods Act 1893;

(b) conform to mutually agreed upon written specifications;

10.2. The Company shall not be liable for a breach of any of the warranties in condition 10.1 unless:

(a) the Buyer gives written notice of the defect to the Company, within 3 days of the time when the Buyer discovers the defect, but in no case later than 15 days after the delivery of the Goods; and

(b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there.

10.3. The Company shall not be liable for a breach of any of the warranties in condition 10.1 if:

(a) the Buyer makes any further use of such Goods after giving such notice; or

(b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, application, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) the Buyer alters or repairs such Goods without the written consent of the Company; or

(d) the Goods have been used by the Buyer: a) for a purpose other than specified by the Buyer and/or b) in conditions not reasonably similar to those used in the testing process;

(e) any specifications, information, quantities, drawings or designs provided to the Company by the Buyer are inaccurate or misleading.

10.4. Subject to condition 10.2 and condition 10.3, if any of the Goods do not conform with any of the warranties in condition 10.1 the Company shall at its option replace such number of the Goods under the Contract that do not confirm with the warranties, or refund the price of such Goods at the pro rata Contract rate for each unit of the Goods that does not comply with the warranties.

10.5. If the Company complies with condition 10.4 it shall have no further liability for a breach of any of the warranties in condition 10..1 in respect of such Goods.

10.6. Except as set forth above, the Company makes no warranty or representation of any kind, express or implied (including no warranty of fitness for any particular purpose).

10.7. Buyer is solely responsible for determining if the Goods are fit for a particular purpose and suitable for Buyer's method of application. Accordingly, and due to the nature and manner of use of the Goods, the Company is not responsible for the results or consequences of use, misuse or application of its Goods.

11. LIMITATION OF LIABILITY

11.1. The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions;

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1893 are, to the fullest extent permitted by law, excluded from the Contract.

11.3. Subject to condition 11.2:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of or in any way in relation to the Contract shall be limited to the Contract price; and

(b) the Company shall not be liable to the Buyer under the Contract or otherwise, or for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or pursuant to any act, omission, negligence or fault of the Buyer.

11.4. Nothing in these Terms excludes or limits our liability for death or personal injury caused by our negligence or fraudulent misrepresentation.

12. ASSIGNMENT

12.1. The Company may assign the Contract or any part of it to any person, firm or company.

12.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

14. GENERAL

14.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

14.6. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Irish law and the parties submit to the exclusive jurisdiction of the Irish courts.

15. RETURNS POLICY

15.1. Notwithstanding the provisions of clause 10 of the Conditions and any other conditions under the Contract, the Company may at its sole discretion:

Where the quantity of Goods specified by the Buyer under the Contract exceeds its needs:

(a) agree that the Buyer may return any excess Goods to the Company for a refund of the price paid for the Goods being returned, provided that;

(b) the Buyer bears the cost of returning such Goods to the Delivery Point; and

(c) the risk of the Goods shall remain with the Buyer until the Company has received the Goods at the Delivery Point and the Company has inspected and accepted the Goods; and

(d) the Company shall not be obliged to accept any returned Goods that it reasonably considers not to be in good condition.

(e) any Goods that are not accepted by the Company shall remain at the risk of the Buyer and, at the cost of the Buyer, shall be dealt with in accordance with the Buyer's reasonable instructions; and

(f) the Buyer shall remain liable under the Contract to pay the Contract price for any Goods that the Company does not accept; and

(g) the Company may charge the Buyer a return fee based on the volume of Goods returned, up to 50% of the Contract price for the returned Goods (such fee to be deducted from any refund of the Contract price to the Buyer where the Contract price has already been paid or recoverable as a debt from the Buyer by the Company).

16. CONFIDENTIALITY

16.1. The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Company or our agents and any other confidential information concerning our business or products which the Buyer may obtain and the Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Buyer.

17. OWNERSHIP OF INTELLECTUAL PROPERTY

17.1. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Buyer by the Company and all rights therein (collectively, "Intellectual Property") will remain the property of the company and will be kept confidential by the Buyer in accordance with these Terms. Buyer has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to the Company upon request from the Company. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any Intellectual Property, other than the limited right to use the Company's Goods or receive the services purchased from the Company.

18. TERMINATION OF CONTRACT

18.1. The Company shall have the right to terminate the Contract immediately if:

(a) the Buyer commits a material breach of any of the terms of the Contract and fails to remedy the same within seven (7) days of being notified of the breach;

(b) the Buyer fails to pay any sum as it falls due (including interest and costs);

(c) upon any of the events listed in paragraph 7.5 occurring; or

(d) there is a change of control of the Buyer (within the meaning of section 11 of the Taxes Consolidation Act 1997).

18.2. The Company shall have the right to suspend any further deliveries and terminate any other contracts the Company may have with the Buyer.

19. EFFECT OF TERMINATION

On termination of the Contract for any reason:

(a) The Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;

(b) The Buyer shall return all of the Goods which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

20. COMMUNICATIONS

20.1. All communications between the parties regarding this Contract must be in writing and delivered by hand or sent by pre-paid registered post, by facsimile transmission or by e-mail:

(a) (in the case of communications to us) to our office or such changed address as shall be notified to the Buyer by us; or

(b) (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.

20.2. Communications shall be deemed to have been received:

(a) if sent by pre-paid registered post, 4 days after posting (exclusive of the day of posting);

(b) if sent by registered airmail, 7 days after posting (exclusive of the day of posting);

(c) if delivered by hand, on the day of delivery;

(d) if sent by facsimile transmission or e-mail on a working day (in Ireland) prior to 4.00 p.m., at the time of transmission and otherwise on the next working day provided that the sender can show satisfactory transmission.

21. COMPLIANCE

Buyer agrees to comply with all local and foreign rules, regulations, ordinances and laws applicable to Buyer's obligations hereunder and Buyer's use of the Goods, including import/export laws, labor laws and anti-corruption laws.