



GENERAL TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the products ("**Products**") specified in any quotation, order acknowledgement, sales confirmation, or other similar document that references these Terms (the "**Sales Confirmation**") provided by any affiliate of Neo Performance Materials ("**Seller**") to the entity identified as the buyer ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products covered hereby, then the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying Sales Confirmation and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) The Products will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Products.

(b) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the quantity shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(c) Unless otherwise agreed in writing by the parties, Seller shall deliver the Products FCA (Incoterms[®] 2010) at Seller's facility set forth in the Agreement, by placing the Products onto the means of transport nominated by the Buyer (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Products. Buyer shall be responsible for all transportation costs. Seller shall not be liable for any delays, loss, or damage in transit.

3. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon making the Products available at the Delivery Point to a carrier designated by Buyer. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Colorado Uniform Commercial Code.

4. **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

5. **Inspection and Rejection of Nonconforming Products.**

(a) Buyer shall inspect the Products within seven days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Products**" means only the following: (i) Product fails to conform to the Limited Warranty (defined below); or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer notifies Seller of any Nonconforming Products under this Agreement during the Inspection Period, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Seller at the Delivery Point. If Seller exercises its option to replace Nonconforming Products, Seller shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in **Section 5(b)** are Buyer's exclusive remedies for the delivery of Nonconforming Products. Except as provided under **Section 5(b)**, all sales of Products to Buyer are final.

6. **Price.**

(a) Buyer shall purchase the Products from Seller at the price(s) (the "**Price**") set forth in the Sales Confirmation. If the Price should be increased by Seller before delivery of the Products to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

7. **Payment Terms.**

(a) Buyer shall pay all invoiced amounts within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer or check and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for three days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

8. **Limited Warranty.**

(a) Seller warrants to Buyer that at the time made available at the Delivery Point to a carrier designated by Buyer, the Products will materially conform to the product specifications set forth in the Sales Confirmation and will be free from material defects in material and workmanship and any continuing liens or encumbrances arising by, through, or under Seller (the “**Limited Warranty**”).

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, OR OTHERWISE.

(c) The Seller shall not be liable for a breach of the warranty set forth in **Section 8(a)** unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within the Inspection Period; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Products and Buyer (if requested to do so by Seller) returns such Products to the Delivery Point for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Products are defective.

(d) The Seller shall not be liable for a breach of the Limited Warranty if: (i) Buyer makes any further use of such Products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Buyer alters, modifies or repairs such Products without the prior written consent of Seller.

(e) Subject to Section 8(c) and Section 8(d) above, with respect to any such Products, Seller shall, in its sole discretion, either: (i) repair or replace such Products (or the defective portion thereof) or (ii) credit or refund the price of such Products at the pro rata portion thereof, provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Products to Seller.

(f) THE REMEDIES SET FORTH IN SECTION 8(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8(A).

9. **Limitation of Liability.**

(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER.**

10. **Indemnification.** Buyer shall indemnify, defend, and hold harmless Seller and its, and its successors' and permitted assigns', parent, affiliates, employees, officers, directors, and partners/members/shareholders (collectively, the "**Indemnified Party**") from and against any third-party claim, suit, action or proceeding that is brought against the Indemnified Party (each, an "**Action**") and all related damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses, including reasonable attorneys' fees, that are incurred by the Indemnified Party (collectively, "**Losses**"), arising out of or resulting from: (i) any material breach by Buyer of its obligations under this Agreement; (ii) any negligent act or omission of Buyer in connection with the performance of its obligations under this Agreement; (iii) any bodily injury, death of any person, or damage to real or tangible personal property caused by the willful or negligent acts or omissions of Buyer; (iv) any failure by Buyer to materially comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement; or (v) the use or sale of any product manufactured or sold by Buyer that incorporates the Products, except to the extent resulting from Seller's negligence or material breach of its obligations under this Agreement.

11. **Insurance.** During the term of this Agreement, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2 million with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with not less than 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

12. **Compliance with Law.** Buyer shall comply with all applicable laws, regulations, and ordinances related to the purchase, transportation, use and disposal of the Products. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

13. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for two days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

14. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy,

power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

16. **Force Majeure.** Neither party shall be liable for any delay or failure in performing its obligations under this Agreement to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including Acts of God, acts of the public enemy, insurrections, riots, fires, explosions, floods, strikes, lockouts, labor disputes, failure of energy sources or transport network, war, acts of terrorism, civil commotion, breakdowns of or malicious damage to plants, mines, equipment or facilities, economic or other shutdown of plant or mine facilities, delays in transportation, shortages of labor or material, court or commission orders, or legal impediments or prohibitions, orders or acts of civil or military authority, geological faults or other geologic conditions, mining conditions, nuclear, chemical, or biological contamination. The existence of such causes of delay or failure shall justify the suspension of manufacture and shipping, and shall extend the time of performance on Seller's part to the extent necessary to enable it to make delivery in the exercise of reasonable diligence after the causes of delay have been removed. Anything herein contained to the contrary notwithstanding, Seller may in its sole discretion, but shall not be required to, make up all or a portion of any deficiencies in deliveries hereunder caused by such event of force majeure.

17. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

18. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

19. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

20. **Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any

jurisdiction other than those of the State of Colorado. The United Nations Convention on Contracts for the International Sale of Products shall not apply.

21. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Colorado in each case located in the City of Denver and County of Denver, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

22. **Notices.** All notices, request, consents, claims, demands, and waivers hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

23. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, Governing Law, Submission to Jurisdiction, and Survival.

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