



## General Conditions of Sale and Delivery Weston, September 2016 ELIX POLYMERS AMERICAS, LLC.

### General Conditions of Sale and Delivery of ELIX POLYMERS AMERICAS, LLC. (the "Seller")

#### 1. General.

1.1. The terms and conditions stated herein shall govern all sales of Products made by ELIX POLYMERS AMERICAS LLC ("Seller"), regardless of the terms and conditions stated in any purchase order submitted by the buyer ("Buyer"). For purposes of these terms and conditions, "Products" means any products sold by Seller to Buyer.

1.2. No addition to or modification of these terms and conditions shall be binding upon Seller unless specifically agreed to by Seller in writing. In case of conflict with any other document, these terms and conditions shall control. Any reference to Buyer's purchase order by Seller shall not affect or limit the applicability of the terms and conditions contained herein.

#### 2. Offers.

2.1. Offers from Seller shall not be binding, but shall be construed as an invitation to the Buyer to submit a purchase order to Seller.

2.2. The Buyer's orders shall become binding on the Seller upon receipt by the Buyer of the Seller's written Order Confirmation (or invoice or delivery note, as applicable).

2.3. Price; Credit.

2.4. Unless otherwise specified (a) all prices, quotations, shipments and deliveries by Seller are D.D.P. Buyer's facility; (b) all base prices, together with related extras and deductions, are subject to change; and (c) all orders are accepted subject to Seller's price in effect at the time of shipment.

2.5. Notwithstanding, should the Seller, during the time between the confirmation of the order and the shipment of the goods, effect a general price increase, the Buyer shall have the right to terminate within two (2) weeks of receipt of Seller's written Order Confirmation, unless the price increase is exclusively due to an increase in freight rates. The right of termination shall not apply to long-term supply contracts (contracts for the performance of a continuing obligation).

2.6. The weight of the goods on which the invoiced amount is to be calculated shall be ascertained in the dispatch department of the Seller's plant from which the goods are shipped.

2.7. All orders are subject to the approval of Seller's Credit Department. Seller may at any time refuse to make shipment or delivery if Buyer fails to fulfill the terms and conditions of payment or fails to provide security in compliance with Seller's credit policies. Seller reserves the right to modify its policies or practices at any time.

2.8. Seller's price for Products is exclusive of any Federal, state, or local sales, use, or excise taxes levied upon, or measured by, the sale, the sales price, or use of Products required in the performance of any order. Seller will list separately on its invoice any such taxes applicable to any such goods or transaction, and payable by Buyer, with respect to which Buyer does not furnish to Seller evidence of exemption.

#### 3. Payment.

3.1. All payments shall be in accordance with the payment terms set forth in Seller's Order Confirmation and incorporated herein.

3.2. Unless otherwise provided in the Seller's Order Confirmation, all payments are due within thirty (30) days from date of the invoice.

3.3. If Buyer fails to make payments on any order between Buyer and Seller in accordance with Seller's terms, Seller, in addition to any other remedies available to it, may at its option (a) defer further shipment until such payments are made and satisfactory credit arrangements are reestablished; (b) cancel the unshipped balance of any order; or (c) charge interest at the rate of 1% over the total amount due for each month or part thereof that the Buyer is in default, commencing as of the invoice due date.

3.4. Where the Seller has reason to doubt the Buyer's solvency or creditworthiness and the Buyer is not prepared to effect advance cash payment or provide the Seller with security as requested, the Seller shall have the right to terminate or cancel that portion of the order which he has not yet been performed.

3.5. Payment shall not be deemed to have been effected until the amount has been cleared into the Seller's account designated for the purpose.

3.6. The Seller reserves the right to use payments for the settlement of the invoices issued to the Buyer which have been outstanding longest, plus any interest in arrears and costs accrued thereon, in the following order: costs, interest and principal claim.

3.7. In no event is Buyer authorized to deduct any amounts from the amounts owed Seller unless specifically authorized in writing by Seller.

#### 4. Delivery.

4.1. The Seller shall make every effort to effect delivery as early as possible. There shall be no fixed periods for delivery. In this respect, it is expressly placed on record that, unless otherwise agreed in writing by Seller, all delivery terms are estimates. The estimated delivery terms are not warranted and, accordingly, may not be deemed to be warranted delivery terms.

4.2. All delivery dates are estimates only.

4.3. Buyer agrees that all orders are subject to a 20% over/underrun and that delivery of such quantity shall constitute fulfillment of an order.

4.4.

5. **Force Majeure.**

Seller shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations, raw material market conditions, shortages of transportation equipment, fuel or labor, inability to procure supplies or raw materials, severe weather conditions, or any other circumstance or cause beyond the reasonable control of Seller. If, as a result of the circumstance or cause beyond the reasonable control of Seller, supply and/or acceptance are delayed by more than eight (8) weeks, either party shall have the right to cancel the order.

#### 6. Shipment; Risk of Loss.

6.1. The Seller reserves the right to choose the route and the form of transportation. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by the Buyer. Unless prepaid freight has been agreed, the Buyer shall also bear any increase in freight rates which become effective after the order has been made, including, but not limited to, any additional costs resulting from re-routing and storage expenses.

6.2. Buyer shall bear the risk of loss or damage for the goods consistent with the applicable Incoterm.

#### 7. Purchase Money Security Interest.

Title to the Products sold hereunder will be deemed to pass to the Buyer upon delivery to the Buyer or collection by the Buyer. Buyer agrees, however, that Seller retains a perfected, purchase money first security interest in all Products, now or hereafter acquired by the Buyer and to any proceeds thereof until the purchase price has been paid in full. The Buyer agrees to execute any financing statements or other documents as Seller may request in order to protect the Seller's security interest.

#### 8. Limited Warranty.

Seller warrants to Buyer that at the time of delivery Seller will have good title to all goods supplied to Buyer and the right to convey title to such goods to Buyer free and clear of all liens. Seller further warrants to Buyer that all such goods will conform to the specifications in effect at the time of manufacturing, and will be free from defects in material and workmanship. If upon inspection, Buyer discovers that any of the Products fails to meet the warranty provided herein, Buyer shall promptly notify Seller and Seller shall analyze the product and if determined that such product does not conform to specifications, it shall promptly and in its absolute sole discretion (i) reimburse Buyer by means of a refund or credit for the purchase price of the Products in question or (ii) replace the Products. The foregoing remedy shall be Buyer's sole remedy for failure of the Products to comply with specifications, provided the foregoing provision shall in no way limit Seller's indemnification of Buyer as to third party claims. If applicable law prohibits this limitation of Buyer's remedies then Seller agrees that the maximum amount Buyer may claim from Seller is an amount equal to the net purchase price Buyer actually paid Seller for the Products determined to be defective. THIS LIMITED WARRANTY IS GIVEN ONLY TO THE ORIGINAL PURCHASER; IT MAY NOT BE TRANSFERRED OR ASSIGNED AND DOES NOT EXTEND TO ANY SUBSEQUENT PURCHASER OR TRANSFERREE OF PRODUCTS. EXCEPT AS PROVIDED HEREIN, SELLER HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

#### 9. Limitation of Liability.

UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOST PROFITS, BUSINESS INTERRUPTION, OTHER PECUNIARY LOSS, OR OTHER INCIDENTAL, TORT, COMPENSATORY, ECONOMIC, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT.

#### 10. Non-Conforming Goods.

10.1. Buyer may inspect shipments to confirm compliance of the Products with specifications. Unless Buyer provides Seller with written notice of any claim for shortage, defect or nonconformity in the Products within two (2) weeks after receipt of shipment, together with supporting evidence, samples and packing slips, stating the invoice number and date, and the markings on the packaging, such Products shall be deemed finally inspected, checked and accepted by Buyer and Buyer's failure to provide such notice shall be deemed to constitute a waiver of any such claim.

10.2. Latent defects must be reported to the Seller immediately upon discovery. The burden of proving that a defect is a latent defect shall rest with the Buyer.

#### 11. Technical Support; Use and Processing.

11.1. Buyer agrees that Seller does not and will not have any control over the design, testing or labeling of any product using the Products, and that Buyer is not relying on any representation or statement made by, or on behalf of, Seller, with respect to suitability of any Product for any purpose, or on any advice, recommendation or information obtained from Seller's product literature or website, including any design aid or other service made available by Seller.

11.2. Buyer shall test the Products as to their suitability for the intended processes and uses. The application, use and processing of the Products are entirely the Buyer's responsibility.

#### 12. Health and Safety Compliance.

Seller will give Buyer Safety Data Sheets ("SDSs," formerly known as Material Safety Data Sheets or MSDSs) for Products sold hereunder. Buyer understands that some Products may be hazardous materials or hazardous substances under various laws and regulations when handled or processed. Buyer agrees to familiarize itself (without further reliance on Seller) with any hazards of the Products, their processing and applications and the containers in which the Products are shipped. Buyer agrees to provide the SDSs to all those required by law to receive same and to inform and train its employees, and properly warn and instruct its customers, as to hazards identified in the SDSs or discovered by Buyer in its investigations. Buyer agrees to properly manage and dispose of all wastes and residues resulting from its use of all Products, including any disposable packaging, in accordance with applicable disposal or recycling laws.

#### 13. Intellectual Property.

13.1. The trademarks, models and plans for the Products (the "Intellectual Property") provided by Seller shall not be copied by Buyer or passed on to other persons or entities. Buyer expressly acknowledges that the Intellectual Property (whether or not registered in the name of Seller) is the sole property of Seller and that it does not have any ownership interest in and to any such Intellectual Property. If there is a claim that any product, in the form in which Seller sold it to Buyer, infringes another company or person's patent or other intellectual property right in the jurisdiction in which such sale took place, then (i) Seller will defend Buyer against such claim, and indemnify Buyer against all reasonable costs of such defense incurred by Buyer, and (ii) if any product subject to such a claim is determined to infringe another company or person's patent or other intellectual property right, Seller shall, at its sole option and expense, either procure for Buyer the right to continue using the product or accept return of the product from Buyer and refund the purchase price thereof. The foregoing states the entire obligation of Seller for intellectual property infringement. Seller shall not be responsible for, and Buyer shall hold Seller harmless against, any damages and costs incurred by Seller as a result of any claim of infringement of another company or person's patent or other intellectual property right that arises from Seller's compliance with any specification or instruction provided by Buyer. In the event that Buyer shall become aware of any claim of the type described above, it will promptly notify Seller in writing and give Seller all necessary information, assistance and exclusive authority for the defense of any such claim and its settlement.

13.2. When using the Seller's Products for manufacturing purposes or when processing them into new products, the Buyer shall not have the right, without the Seller's prior written consent, to use the Seller's trademarks and/or trade names or those of any of the companies in its group, on the resulting products or on the packaging therefore or in any relevant printed matter or advertising literature, particularly by mentioning the Seller's Products as components of his own products.

#### 14. Verification.

Buyer shall guarantee the right of access of the Seller its customers and any regulatory authorities to the relevant areas of its facilities, at any level of the supply chain, that are involved in the product transformation process, to verify that the use of the Products is compliant with these Terms and Conditions.

#### 15. Notices.

15.1. All notices, requests, demands and other communications that may be made between parties related to their business relationship shall be in writing, by any legally and permissible mean in law that duly provides an irrefutable record, to the addresses and for the attention of the persons that appear in the heading of the order.

15.2. Any amendment or change in the addresses or attention persons indicated by parties shall be communicated to the other party by any of the means previously mentioned and it shall not take effect until the other party acknowledges receipt of that amendment or change.

15.3. In the event that the notices received by parties were made on a non-business day, it shall be deemed received on the next business day. In doing so, Saturdays, Sundays and public holidays in the towns of the addresses of both parties shall be deemed non-business days.

#### 16. Export Controls.

Buyer will ensure that any Products, technology or software received from Seller are exported by Buyer only in compliance with applicable laws, including U.S. export control and economic sanctions laws. At all times, Seller will be entitled to decline to sell or ship to any party appearing on the Denied Persons List published by the Bureau of Industry and Security of the U.S. Department of Commerce, or identified in any similar governmental publication.

#### 17. Cancellation.

Orders cannot be canceled or modified by Buyer except with the express written consent of Seller.

#### 18. Compliance with Laws.

Buyer shall comply with all applicable laws, regulations, and other legal requirements regarding the export, import, sale, distribution, marketing, and service of the Products and related technology, including without limitation, tax and foreign exchange legislation or regulations and the obligations under Clause 17.

#### 19. Governing Law.

All orders shall be governed by and interpreted in accordance with the laws of the State of Florida. The terms and conditions stated herein shall govern over any contrary terms in Article 2 of the Uniform Commercial Code as adopted in the State of Florida. The terms and conditions set out in the United Nations Convention for the International Sale of Goods (CISG) are hereby expressly excluded.

#### 20. Dispute Resolution.

Any claim, action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be heard and determined in any Florida State or federal court sitting in the Broward County, and each of the parties hereto hereby consents to the exclusive jurisdiction of such courts and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have that any such claim, action, suit or proceeding which is brought in any such court has been brought in an inconvenient forum.

#### 21. Waiver of Jury Trial.

EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY, AND AGREES THAT IT WILL NOT SEEK A TRIAL BY JURY.

#### 22. Complete Agreement.

These terms and conditions, together with Buyer's purchase order and sales contract or agreement, if any, constitute the sole and entire agreement between Buyer and Seller with respect to any order. No addition to or variations from such terms and conditions, whether contained in Buyer's purchase order, any shipping release or elsewhere, shall be binding upon Seller unless expressly agreed to in writing by Seller.

Weston, 1<sup>st</sup> September 2016