

## TERMS AND CONDITIONS OF PURCHASE ORDER

## GENERAL TERMS AND CONDITIONS

The offer of Morgan Advanced Materials Canada Inc. ("Buyer") to purchase the goods and/or services described in this purchase order is expressly conditioned upon Seller's acceptance of the terms and conditions set forth herein which shall constitute the sole terms and conditions for such purchase. Buyer rejects all contrary or additional terms and conditions of Seller contained in any acceptance or sales acknowledgement unless expressly agreed to in writing by Buyer. Seller shall be deemed to have accepted the terms and conditions contained herein upon the earlier of (i) Seller's failure to notify Buyer of Seller's rejection of these terms and conditions within ten (10) days of Seller's receipt thereof or (ii) Buyer's receipt of any goods and/or services delivered hereunder. These terms and conditions are incorporated and made a part of the purchase order to which they are attached. The parties have agreed that this Agreement be drafted in English. Les parties ont convenu à ce que ce Contrat soit rédigé en anglais.

Except as otherwise agreed in a written contract in effect between Buyer and Seller for the purchase and sale of the goods and/or services described herein the following terms and conditions apply:

## PURCHASE OF GOODS

**1. Prices.** Prices for the goods are set forth in this purchase order. If no price is stipulated herein, the goods shall be charged at prices not exceeding those last previously quoted or charged to Buyer for goods of like kind or quality; provided, however, if Seller shall offer a lower price for the goods to any of its customers ordering the same or lesser quantity thereof prior to receipt by Seller of payment for the goods hereunder, the price of the goods shall be reduced to such lower price and if Seller receives payment hereunder it will promptly refund to Buyer the difference between the price contained in this purchase order and such lower price.

**2. Taxes.** Seller shall be responsible for the payment of the amount of all taxes, excises and other governmental charges (including taxes on or measured by net income) required to be paid with respect to the production, sale or transportation of any goods manufactured for or delivered to Buyer hereunder, except as may otherwise be provided by law.

**3. Payment.** Payment terms, unless otherwise specified in this purchase order, are net 30 days after the date of Seller's invoice. Seller may only invoice Buyer for goods on or after the date that such goods are delivered to Buyer in accordance with the terms hereof. Payment for goods delivered under the purchase order shall not constitute an acceptance thereof.

**4. Delivery.** Time is of the essence. Delivery of all goods purchased by Buyer shall comply with shipping instructions supplied by Buyer and the goods shall be packed for shipment in manner suitable for the method of shipment specified in such instructions.

**5. Representations by Seller.** Seller represents and warrants to Buyer that (i) it holds all right, title and interest in and to the goods and has the right and authority to sell the goods to Buyer and (ii) all right, title and interest in and to the goods shall pass to Buyer upon delivery to, and acceptance thereof by, Buyer in accordance with the terms hereof.

**6. Warranties.** Seller warrants that all goods delivered hereunder (i) shall be of Seller's standard quality for the type and grade of material involved and free from defects, latent or patent; (ii) shall conform to all specifications, drawings or descriptions furnished or specified by Buyer; (iii) shall be merchantable and suitable and sufficient for their intended purposes; (iv) shall be adequately contained, packaged and labeled and shall conform to any promises and affirmations of fact made on the container and label; and (v) shall be free of any claim of any third party. In the event of any inconsistency among the foregoing, the description given in this purchase order shall control Seller's warranty. Buyer's inspection and/or acceptance of and/or payment for goods and/or services shall not constitute a waiver by it of any warranties.

**7. Breach of Warranty.** If Buyer shall determine that any goods do not conform to the warranty set forth herein it shall notify Seller thereof and Buyer may, in its sole discretion, return to Seller either the specific non-conforming goods or the entire shipment of which the non-conforming goods were a part whereupon, in addition to any other remedies Buyer may have at law or in equity, Seller shall, at Buyer's option (i) replace such non-conforming goods or shipment of goods with goods or shipment of goods which conform to the warranty therefor, or (ii) refund to Buyer the purchase price and shipping charges therefor. All shipments and deliveries of non-conforming goods by Buyer shall be at the expense of Seller and, if paid by Buyer, Seller agrees to reimburse Buyer upon demand therefor.

**8. Quality.** Buyer and its customers reserve the right to review and verify at Seller's facility the quality of work, manufacturing processes, records and materials applicable to this purchase order.

## PURCHASE OF SERVICES

**1. General Conditions.** Seller shall furnish all services, labor, materials, equipment, tools and everything necessary to undertake and complete all the work contemplated by the drawings, plans, specifications, addenda and other communications provided and as described on the purchase order (the "Work").

**2. Seller's Examination.** Seller shall be held to have examined any specifications and/or drawings provided by Buyer and to have made all investigations essential to the understanding of the difficulties which may be encountered when performing the Work and to be satisfied as to the conditions under which Seller shall be obliged to operate, the character and nature of the Work, safety regulations and all other considerations which may affect the Work in any manner.

**3. Prices.** Prices for the Work are set forth in this purchase order.

**4. Warranties.** Seller warrants that all materials and equipment incorporated into the Work (except materials and provided by Buyer) and every portion of the Work shall conform to the terms of this purchase order, shall be of the best quality, shall be fit for the particular purpose for which they are required, and shall be free of all defects in the materials and workmanship until the expiration of one (1) year after completion of the Work, as evidenced by final payment of Buyer to Seller. Upon receiving written notice from Buyer, Seller shall promptly make such repairs and replacements as are necessary to correct any failure to meet any warranty hereunder, at Seller's sole expense. In the event Seller does not correct such failure within a reasonable time, Buyer shall have the right to have such corrections made and Seller shall pay Buyer the costs thereof, promptly after receipt of an invoice. Neither acceptance of or payments for the Work or any parts thereof, nor the partial or entire use of the Work by Buyer shall release Seller from liability for any warranties for equipment installed or for workmanship which is faulty, unsound, improper or not in accordance with this purchase order.

**5. Labor.** Seller shall operate as an independent contractor and no employee of Seller or its subcontractors shall be deemed an employee of Buyer. Seller acknowledges that it is solely responsible for the conduct of its employees while providing services pursuant to this purchase order. Further, Seller shall employ, or cause to be employed, on or in connection with the performance of the Work, only persons who are fit and skilled in the work assigned and have received all safety training appropriate for any hazards involved in the Work. Should any disorderly, incompetent or objectionable person be employed on the Work by Seller or by any of its subcontractors, Seller shall, upon request of Buyer, cause such person to be removed immediately from Seller's premises.

**6. Site Rules.** Seller shall obtain all required and necessary permits and licenses and shall comply with all laws, ordinances and governmental rules and regulations applicable to the Work, to labor employed on the Work and to the preservation of the public health and safety. All regulations and rules of Buyer in effect at the site regarding safety, employee's passes, badges and conduct on the property shall be rigidly observed by Seller, its personnel, employees and subcontractors.

**7. Insurance.** At all times that Seller is providing services to Buyer, Seller shall maintain insurance policies, including bodily injury liability, property damage liability, commercial general liability and statutory workers compensation insurance in amounts specified by Buyer. Seller shall furnish written certificates establishing that the required insurance has been procured and is being maintained, and such certificates shall provide that written notice of cancellation shall be given to Buyer at least ten (10) days prior to the effective date of such cancellation. Seller further agrees to use only subcontractors that provide insurance certificates of comparable coverage. No representative or subcontractor of Seller shall be allowed entry to Buyer's site to perform services until Buyer has received a copy of the certificate(s) of insurance.

**1. Force Majeure.** Neither party shall be liable for its delay or failure in performing hereunder due to conditions or events beyond its reasonable control, including without limitation, natural disasters, war, terrorism, accidents, governmental laws, ordinances, rules and regulations and inability to obtain material, equipment or transportation. If Seller is unable to supply any of the goods or services because of any such condition or event, Seller shall immediately notify Buyer of such fact and shall provide Buyer with a good faith estimate of when Seller expects to be able to supply such goods or services. Buyer shall thereupon have the option, upon notice to Seller, of obtaining substitutes for some or all of such goods or services from other suppliers, whereupon the total quantity of goods deliverable or services to be rendered hereunder shall be reduced by the quantity so substituted, and the amount payable by Buyer shall be reduced pro-rata.

**2. Compliance with Laws.** In the performance of this purchase order, Seller shall comply with all Federal, Provincial and local laws, statutes, rules, and regulations.

**3. Intellectual Property Warranty.** Seller warrants that: (i) neither the services provided nor the goods furnished hereunder nor the sale or use thereof will infringe or misappropriate any Canadian, United States or foreign patent, trademark, copyright (including moral rights); or other intellectual property, proprietary or similar rights; (ii) Seller shall, at its own expense, defend any claim or suit that may arise with respect to any aforementioned infringement or allegation thereof; and (iii) Seller shall indemnify and hold Buyer and/or its customers harmless from all loss and expense incurred on account of any alleged or actual infringement. Buyer shall promptly notify Seller of any infringement claim made against it. The warranty provided herein shall not apply to goods to the extent such goods are manufactured exclusively in accordance with Buyer's specifications.

**4. Assignment.** Seller may neither assign any right or interest in the agreement resulting from Seller's acceptance of Buyer's purchase order nor delegate performance of any of its obligations without Buyer's written consent.

**5. Governing Law.** The validity, interpretation and performance of the agreement resulting from Seller's acceptance of Buyer's purchase order shall be governed by the laws of the Province of Ontario without regard to its rules concerning conflicts of laws. The United Nations Convention on the International Sale of Goods shall not apply to this purchase order.

**6. Entire Agreement; Modification; Waiver.** The agreement resulting from Seller's acceptance of Buyer's purchase order constitutes the entire agreement between Buyer and Seller for the purchase and sale of the goods or services described herein. No course of dealing between Buyer and Seller and no usage of trade shall vary any terms and conditions herein. Buyer reserves the right at any time prior to shipment or performance to make changes, by written notice, relating to this purchase order. No modification or waiver of the terms or conditions hereof by the Seller shall be binding upon Buyer unless approved in writing by Buyer.

**7. Arbitration and Submission to Jurisdiction.** All disputes and claims in respect of or relating to any provision of this Agreement, this Agreement's termination, or relating to or arising out of the terms and conditions of this Agreement, (including, without limitation, any claims or disputes regarding any provision of these Terms, any specification, standard or operating procedure or any obligation of Buyer or the Seller deemed to be illegal or otherwise unenforceable or voidable under law, ordinance or ruling) shall be settled by arbitration in Toronto, Ontario. The Parties shall agree on a single arbitrator, who shall determine, after consultation with the Parties, on the procedure and substantive law of the arbitration. If the parties are unable to agree on an arbitrator, the arbitrator shall be chosen by the Ontario Superior Court of Justice. All issues, disputes or claims under the arbitration shall be decided by the arbitrator, provided that the arbitrators shall only interpret and apply the terms or conditions of this purchase order and shall not change any terms or conditions hereof or deprive either party of any right or remedy provided for in this purchase order. Each Party consents to the exclusive jurisdiction of the Superior Court of Justice for purposes of enforcing this provision, and for any request for interlocutory injunctive relief, or such other provisional relief that is necessary or appropriate, prior to the retainer or designation of the arbitrator. Following the retainer or designation of the arbitrator, the arbitrator shall have exclusive jurisdiction to award interlocutory injunctive or provisional relief. All awards of the arbitration shall be binding and non-appealable except as permitted by law. Any judgment including judgment upon the award of the arbitrator may be entered in any superior Court having jurisdiction thereof. The arbitration shall take place at a time notified by the arbitrator regardless of whether one of the parties fails or refuses to participate. The arbitrator may award costs (including lawyer's fees and disbursements) in connection with the arbitration proceeding in addition to any other relief that may be granted.

**8. Remedies.** All of Buyer's rights hereunder are separate and cumulative and in addition to any other rights Buyer may have at law or in equity, and no exercise by Buyer of any right hereunder shall preclude Buyer from exercising any other legal or equitable right or remedy available to it.

**9. Indemnification.** Seller shall indemnify, hold harmless and save Buyer, its affiliates, shareholders, directors, officers, employees, successors and assigns (individually, a "Buyer Indemnitee") from and against, for and in respect of, any and all demands, judgments, injuries, penalties, damages, losses, obligations, liabilities, claims, actions or causes of action, encumbrances, costs, expenses (including without limitation, reasonable lawyer's fees) suffered, sustained, incurred or required to be paid by any Buyer Indemnitee arising out of or based upon or in connection with or as a result of Seller's performance under this purchase order, including but not limited to (i) any breach of any representation, warranty or condition made by Seller herein (or implied herein by law) or of any obligation of Seller hereunder, (ii) the use by Buyer, its affiliates or customers of the goods or services, (iii) product liability claims in connection with any of the goods or services used by Buyer, its affiliates or customers, (iv) any violation of any federal, provincial, state or local rule, regulation or governmental order, (v) injury, sickness and/or diseases, including death, resulting at any time from bodily injury, sickness and/or disease, where such injury, sickness or disease is in any way connected to the goods delivered or the services performed pursuant to this purchase order. In the event that this purchase order provides for services to be performed on property owned or controlled by any party or parties other than Buyer, the aforesaid obligation to defend, indemnify and hold harmless shall be expanded to include such party or parties, their employees and agents. This indemnification clause applies regardless of the negligence of Buyer or Buyer's employees.

**10. Termination.** Buyer may, by notice in writing, terminate this purchase order at any time, whether or not Seller is in default, and such termination shall not constitute default. In no event shall Seller be entitled to anticipatory profits or to special or consequential damages. In the event of such termination, Seller shall promptly deliver to Buyer copies of all subcontracts and purchase orders entered into by Seller in connection with the Work and shall settle and discharge all such purchase orders and subcontracts which Buyer requests Seller to settle. Promptly after such termination, Seller shall transfer and assign to Buyer all purchase orders and subcontracts which are not settled and discharged, all materials for which payment is made by Buyer hereunder, all drawings and documents furnished by Buyer to Seller in connection with the Work. Seller shall take such action as may be necessary to secure in Buyer the rights of Seller under all such purchase orders and subcontracts assigned hereunder.

**11. Rights to Information.** Seller shall not, without Buyer's prior written consent, disclose any information relative to this purchase order, except as may be necessary to ensure performance. Seller, however, agrees that any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with this purchase order, shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed to be confidential or proprietary information, and shall be acquired free from any restrictions (other than a claim for patent infringement) as part of the consideration for this purchase order. All designs, drawings and specifications furnished to Seller by Buyer in connection with this purchase order shall remain the property of Buyer at all times and shall be returned to Buyer at once upon the completion or termination of this purchase order. Seller agrees it will not use such designs, drawings and specifications in connection with goods produced or work performed for anyone other than Buyer.