

CONDITIONS OF SALE

In these conditions of sale (“Conditions”) “The Company” means ACC Silicones Ltd with registered number 460261 , or any successor in title to the Company’s business. The “Customer” means a company, firm, partnership, association, individual, health or public authority or agent thereof to whom the Company supplies or sells Goods. The “Goods” means and includes any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them). The “Order” means any request by the Customer to purchase the Goods supplied by the Company which may be accepted or not by the Company. The “Contract” means any contract between the Company and the Customer for the sale and purchase of the Goods incorporating these Conditions and which is formed at the time the Company accepts the Order in accordance with the provisions of clause 2 below.

1. SCOPE OF CONDITIONS

1.1 These Conditions apply to all 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 representative of the Company.

1.2 In the event of any difference or inconsistency between these Conditions and any conditions attached to or referred to in any Order or other documents referred to by the Customer at any time, these Conditions shall prevail.

2. FORMATION OF CONTRACT

2.1 Each Order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these Conditions and shall form an independent Contract.

2.2 No Order shall be deemed to be accepted by the Company until a written acknowledgment of Order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.3 The Customer shall ensure that the terms of its Order and any available specification are complete and accurate.

3. QUOTATIONS

3.1 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of Order to the Customer.

3.2 The Company reserves the right to withdraw or cancel any quotation at any time without notice.

3.3 Unless previously withdrawn or cancelled, the Company’s quotation expires sixty days after the date thereof..

4. VARIATION OF PRICES

4.1 The Company reserves the right to alter prices without notice should any fluctuation in costs arise which are outside the Company’s control, and which affect all or any part of an Order after the acceptance of such an Order.

4.2 Any alteration by the Customer in design, formulation, specification or quantities and any suspension of work on instructions, or due to lack of instructions, from the Customer will involve the alteration of the agreed or quoted prices if costs are affected thereby.

4.3 In the case of quotations submitted on the basis of prices ruling at the time, the Company reserves the right to make adjustments for increases in material or labour costs in accordance with NEDO or other pre-agreed with the Customer indexes formula.

5. DELIVERY

5.1 The time given for delivery of Goods runs from the date of the Company's acceptance of a written Order and receipt of all other necessary information to process such Order including without limitation, specifications and free issue materials or components finally approved by the Company in writing.

5.2 Dates for delivery are given in good faith but are estimates only and are not guaranteed and time of delivery shall not be of the essence.

5.3 The Company shall be under no liability whatsoever 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 losses) costs damages charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor shall any delay in the delivery of the Goods entitle the Customer to terminate or rescind the Contract.

5.4 Delivery shall be deemed to take place and risk in the Goods shall pass:

- (a) in the case of Goods to be collected by the Customer or the Customer's agent when the Goods are loaded on the vehicles collecting them;
- (b) in the case of Goods delivered within the UK by the Company or the Company's agents – when the Goods are unloaded from the vehicles delivering them at the address nominated by the Customer or the Customer's agent for delivery;
- (c) in the case of Goods to be exported by the Company – when the Goods pass over the ships rail as follows:-

Goods shipped FOB	At the port of loading
Goods shipped C and F	At the port of loading
Goods shipped CIF	At the port of destination

5.5 If for any reason Customer does not accept delivery or fails to collect the Goods or Company is unable to deliver because Customer has not provided appropriate instructions documents licences or authorisations:

- (a) risk in the Goods shall pass to the Customer;
- (b) the Goods shall be deemed to have been delivered;
- (c) the Company may at its option and at Customer's costs store or arrange for delivery of the Goods.

5.6 The Customer shall provide at point of delivery and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

6. NON-DELIVERY

6.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

6.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non delivery within five days of the date when the Goods would in the ordinary course of events have been received.

6.3 Any liability of the Company for non-delivery of the Goods shall 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. RETENTION OF TITLE

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

7.2 Whether or not the risk in Goods sold shall have passed to the Customer the property in Goods sold shall be and remain in the Company until the Company has received payment in full or any other Goods supplied by the Company to the Customer, the price for which is overdue for payment.

7.3 Pending receipt by the Company of such payments, the Customer shall hold the Goods for the Company as fiduciary bailee.

7.4 When payment for the Goods is overdue or the Customer suffers distress or execution to be levied against its effects, makes an arrangement or composition with creditors or, being a corporate body, enters into liquidation (otherwise than for the purpose of amalgamation or reconstruction where the corporate body, as amalgamated or reconstructed, accepts in full the Customers liability to pay for the Goods), or has a receiver appointed, for the whole or any part of its undertaking or, being an individual, has a receiving order in bankruptcy made against him then:

- (a) if the Customer remains in possession of the Goods, whether or not the Customer has sold them, the Company shall be entitled to recover the Goods from the Customer and in this respect the Customer grants the Company, its agents or employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to recover them or,
- (b) If the Customer has parted with possession of the Goods by way of sale, whether or not the Goods have been mixed with or incorporated into other Goods, the Customer, having sold them as fiduciary bailee, shall hold in trust for the Company as much of the proceeds of the sale of the Goods as represents the Customer's liability to the Company in respect of them.

8. INSTALLMENTS

8.1 Where the Goods are delivered by instalments each delivery shall be deemed to constitute a separate enforceable Contract but the Company, may, without prejudice to any other rights it may have, treat a failure to accept or pay for any instalment as a repudiation of the entire Contract.

9 CLAIMS FOR DAMAGE, SHORTAGE OR LOSS

9.1 No claim for damage in transit, shortage or delivery or loss of Goods will be entertained unless:-

- (a) in the case of damage in transit or shortage of delivery, notification of the particulars is made to the carrier concerned and to the Company within three days of the receipt of the Goods and this is followed by a complete claim in writing to the carrier ;
- (b) in the case of loss of Goods consigned to a destination within the UK written notice is given to the Company within five days of the date of receipt of invoice; and
- (c) in the case of loss of Goods consigned to a destination outside the UK notice in writing is despatched to the Company within ten days of the expected date of arrival

9.2 Damaged Goods in respect of which any claim is made shall be preserved intact for a period of fourteen days from the notification of the claim if located inside the UK and for a period of forty-five days from such notification if located outside the UK within which period the carrier and the Company shall have the right to inspect the Goods and to attend the Customers premises, or its Agents premises, to investigate the complaint.

9.3 Any breach of this condition shall disentitle the Customer to any allowance in respect of the claim.

9.4 In the event a valid claim is made by the Customer in accordance with the provisions of clauses 9.1 to 9.3 above then the Company only liability shall be limited to the replacement of the lost or damaged Goods or making good any shortfall.

10 EQUIPMENT

10.1 All tools, jigs, dies, moulds or other equipment ("Equipment"), whether or not the cost thereof or any part of the cost thereof be quoted or otherwise included with the price of Goods, shall remain the property of the Company unless otherwise agreed in writing by the Company.

10.2 All Equipment will be stored by the Company for a reasonable period of time and in anticipation of further Orders, but the Company will not accept any liability for any loss or damage (howsoever arising) thereto from whatever cause.

10.3 In the event of a Customer ordering a smaller number of Goods than that specified in the quotation or failing to take delivery of such full quantity within the period stated in the quotation the Company reserves the right to charge to the Customer the whole, or a proportionate part as may be appropriate, of the cost of manufacturing the Equipment, taking into account the part of such cost stated in the quotation. The quotation is based on the assumption that where the Equipment (or any part thereof) is to be provided by the Customer, the same will be suitable for the Company's machines and methods of manufacture without the Company incurring any cost or expenses.

11 IMPROVEMENTS AND ALTERATIONS

11.1 The Company, whose policy is one of continuous improvement, reserves the right to discontinue or make, without notice any changes in materials, dimensions and design which, having regard to all the circumstances, it thinks reasonable or desirable provided that the Customer shall not be required to accept Goods substantially different from those specified in the Order.

12 ILLUSTRATIONS AND DESCRIPTIONS

12.1 All illustrations, photographs, samples and descriptions are intended as a general guide only and shall not form part of any Contract or Order unless otherwise agreed in writing by the Company.

13 TEST AND INSPECTION

13.1 Any test or inspection of the Goods which may be required by the Customer, other than the Company's usual or routine test or inspection and which is agreed by the Company, shall, unless otherwise agreed, take place at the Company's works at a time convenient to the Company and at the Customer's expense.

13.2 Approval of the Goods following any test or inspection pursuant to this clause 13.1 shall release the Company from any liability whatsoever.

14 INDEMNITY

14.1 The Customer shall indemnify and keep the Company its affiliates harmless and indemnified against all damages, losses, claims liabilities, , costs (including legal costs) and expenses which the Company or its affiliates may suffer or incur arising out of or in connection with work done in accordance with the Customer's specifications or instructions howsoever arising or performance of Company's obligations under a Contract.

15 INSOLVENCY

15.1 Subject to the provisions of clause 7 above, if the Customer commits an act of bankruptcy or becomes insolvent or shall make any composition or arrangement with its creditors or, being a limited Company, shall go into liquidation (other than a members' voluntary liquidation in connection with a scheme of amalgamation or reconstruction) or suffer

the appointment of a receiver of its undertakings, property or assets or any part thereof, the Company shall thereupon be entitled to terminate the Contract forthwith by notice in writing and without prejudice to the Company's other rights hereunder to recover from the Customer any loss on sale of the Goods the subject of the Contract.

16 CANCELLATION OR REDUCTION

16.1 Orders placed cannot be cancelled except with the Company's consent and on terms which will indemnify the Company against all loss, cost and expenses.

16.2 No Goods (or any part thereof) may be returned by the Customer without the Company's consent. No Goods (or any part thereof) may be returned if custom made to the Customer's specification, instructions or other directions.

16.3 If the Customer wishes to request return Goods it shall promptly notify in writing the Company within two days of delivery of the relevant Goods, it shall ensure that the Goods are stored in a safe location and will not open, use or partial use the Goods and it shall ensure that any packaging, seals and other containers are unbroken. It is at the Company total discretion to accept a return and credit the relevant price against a new Order of the Customer or refuse to do so.

17 PRICE AND PAYMENT TERMS

17.1 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.

17.2 Prices quoted are strictly net unless otherwise specified on the Company's quotation or invoice and are exclusive of value added tax. When value added tax is imposed, it will be added to prices at the appropriate rate(s) at the time of invoicing.

17.3 Prices are also exclusive of all costs or charges in relation to packaging, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.

17.4 Subject to satisfactory trade references being provided by the Customer, accounts shall be due for payment not later than the 30th day following the date of the invoice.

17.5 Time for payment is of the essence.

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

17.7 Failure by the Customer to make payment in accordance with the above shall entitle the Company to suspend any outstanding deliveries or to cancel the contract at the Company's option and without prejudice to the Company's rights to damages. The Company shall have the right to charge interest on overdue accounts at 2% over the base rate for the time being of the Bank of England accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

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

18 CONSTRUCTION

18.1 Any Contract resulting from the Company's acceptance of a Customers Order shall be governed by and constructed according to the laws of England.

18.2 Any dispute(s) arising out of the Contract shall be referred to arbitration in England in accordance with the provisions of the Arbitration Act of 1996 or any statutory modifications thereof for the time being in force.

19. ASSIGNMENT

- 19.1 The Company may assign the Contract or any part of it to any person, firm or company.
 19.2 The Contract or any part shall not be assigned by the Customer without the prior written consent of the Company.

20 FORCE MAJEURE

20.1 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 Customer (without liability to the Customer) if it is prevented from or delayed in 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, provided that, if the event in question continues for a continuous period in excess of twenty days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

21. WARRANTY and LIMITATION OF LIABILITY

- 21.1 No warranty, condition or representation as to description, condition, quality or suitability whether collateral to the Contract or otherwise is given or deemed to have been giving or implied.
- 21.2 Any statutory or other warranty, whether express or implied and whether collateral to the Contract or otherwise, is hereby excluded and extinguished, except in relation to liability for
- (a) death or personal injury resulting from the Company's negligence; or
 - (b) under section 2(3) of the Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraudulent misrepresentation
- 21.3 Without prejudice to the foregoing, the Company shall repair or replace any Goods or products of the Company's own manufacture which during the 12 months immediately following the delivery of the Goods or completion of the Contract or the stated shelf life of the product where that is shorter as the case may be, are found to be defective due to faulty workmanship or materials, exclusive of normal wear and tear, misuse and neglect.
- 21.4 Within 14 days of the discovery of the alleged defect the Customer shall return the Goods properly packed to the Company's works, unless otherwise arranged.
- 21.5 If necessary, the Customer will allow authorised representatives of the Company to inspect the allegedly faulty Goods on the Customer's premises at a mutually convenient time.
- 21.6 If the defect is due to faulty workmanship or materials the Company shall, at its own option, repair or replace the faulty Goods.
- 21.7 The Company shall not be liable to repair or replace any Goods reported as faulty if;
- (a) The Customer makes any further use of such Goods after giving notice to the Company that they are defective; or
 - (b) the defect arises because the Customer has failed to follow the Company's oral and written instructions as to storage, installation, commissioning, use or maintenance of the Goods; or
 - (c) the Customer alters or repairs such Goods without the written consent of the Company
- 21.8 Subject to condition 21.2 above, 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 the Contract shall be limited to the Contract price.
- 21.9 (Save as provided in these Conditions of Contract and save as in relation to death or personal injury resulting from the negligence of) the Company, its servants and agents shall not in any event be liable for any (and in each case whether direct indirect or consequential) injury,

loss or damage, pure economic loss, loss of business, depletion of goodwill, loss of profit or expenses of any kind whatsoever, howsoever caused, arising in connection with the Goods supplied by the Company.

22. GENERAL

22.1 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.

22.2 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.

22.3 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.

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

22.5 The parties to the Contract do not intend that any that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

23. COMMUNICATIONS

23.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax to:

(a) (in the case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer

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

23.2 Communications shall be deemed to have been received:

(a) if sent pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

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

(c) if sent by fax on a working day before 4pm, at the time of transmission and otherwise on the next working day.

23.3 Communications addressed to the Company shall be marked for the attention of the Company Secretary

22. ENTIRE AGREEMENT

22.1 This Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

22.2 Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract.

22.3 Nothing in this clause shall limit or exclude any liability for fraud.

Terms updated 2007