

Nexeo Solutions Plastics, LLC
SALES TERMS AND CONDITIONS – US

1. SELLER warrants that the Product will conform to the SELLER's standard specifications. SELLER MAKES NO OTHER WARRANTY REGARDING FITNESS, QUALITY OR PERFORMANCE OF THE PRODUCT. SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES RELATED TO SAMPLES. BUYER warrants that it has independently determined the suitability of the Product for BUYER's use.
2. SELLER's sole liability, and BUYER's exclusive remedy, for Products that do not conform to SELLER'S warranties shall be, at Seller's option, the replacement of the non-conforming Product, or the refund of the purchase price of the non-conforming Product. SELLER will reimburse BUYER for any direct costs incurred by BUYER for shipping, storing, handling or disposing of non-conforming Products done with SELLER's prior approval.
3. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF THIS CONTRACT, DUE TO ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED ON NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), EXCEED THE PURCHASE PRICE OF THE PRODUCT IN RESPECT TO WHICH SUCH CAUSE ARISES. IN NO EVENT SHALL SELLER BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, SPECULATIVE OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER IS ADVISED OF SUCH DAMAGES.
4. BUYER shall pay all taxes, excises, fees or charges with respect to the sale or transportation of the Product.
5. BUYER represents that it is not insolvent, as that term is defined in the Uniform Commercial Code (U.C.C.).
6. BUYER acknowledges that it has received and is familiar with SELLER's labeling and literature concerning the Product, and BUYER agrees to forward such information to its employees, independent contractors, and others who handle and use the Product for BUYER.
7. BUYER will comply with all laws, rules and regulations pertaining to handling of the Product. BUYER assumes all risks and liability arising out of its use, storage, handling and resale of the Product.
8. BUYER agrees to defend, indemnify and hold SELLER harmless against claims by any third party (including BUYER's employees and customers) arising out of BUYER's use, storage, handling or resale of the Product.
9. BUYER shall confirm the accuracy of all shipments as to Product identity, quantity and quality upon receipt, and BUYER waives all claims therefor unless made in writing and delivered to SELLER within ten (10) days after receipt of goods.
10. BUYER accepts SELLER's point-of-shipment weights and measurements, unless proven incorrect. On sales made F.O.B. delivered basis, no allowances for shortage or damage will be made by SELLER unless BUYER furnishes acknowledgment from the carrier that same occurred in transit. On all sales made F.O.B. SELLER's plant or warehouse, BUYER will, in the event of loss or damage in transit, file its own claim with carrier.
11. In no event shall BUYER be entitled to set off against any amount payable by BUYER in connection with the sale of Products hereunder any amount owed or allegedly owed by SELLER to BUYER arising from this transaction or any other transaction or agreement between BUYER and SELLER.
12. Neither BUYER nor SELLER shall be liable for any delay in performance or non-performance for any cause beyond the reasonable control of the party affected, whether or not foreseeable by the party affected. Except as otherwise provided herein, U.C.C. Section 2- 615 shall govern the rights of both parties hereto in the event of such delay or non-performance.
13. If at any time the financial responsibility of BUYER, or the credit risk involved, shall become unsatisfactory to SELLER, SELLER may require cash or satisfactory security prior to subsequent shipments or deliveries hereunder. The election by SELLER to require such cash or security shall not affect the obligation of BUYER to take and pay for the contracted Products. BUYER agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by SELLER in the collection of any sum payable by BUYER to SELLER hereunder.
14. These Terms and Conditions (Terms) apply whether or not they are attached to or enclosed with the Products. These Terms and SELLER'S confirming order or acknowledgement constitute a final, complete, and exclusive statement of the entire contract related thereto, and no parole evidence, course of dealing, conduct, performance, or usage of the trade shall be relevant to supplement or explain it. Notwithstanding the terms set forth in BUYER's purchase order, these Terms constitute a counteroffer, acceptance of which is expressly limited to these Terms. These Terms supersede and replace all terms of BUYER's purchase order, acknowledgement or other document related to the sale of the Products.
15. Any action on behalf of BUYER for breach of the contract must be commenced within one year after the cause of action has accrued.
16. This contract shall be governed by and construed under the laws of the State of Texas, without regard to its conflict of laws provisions.
17. If BUYER resells the Product, BUYER shall ensure compliance with the U.S. export law. No Product(s) can be exported or re-exported without proper export authority, which is granted by the U.S. Department of Commerce.
18. Except to the extent prohibited by applicable law, SELLER expressly disclaims any and all provisions of the Federal Acquisition Regulations and the Defense Federal Acquisition Regulation Supplement.