

# General Conditions of Sale (United States)

Envalior Engineering Materials Inc. • 203 W. Big Beaver Road, Troy, MI 48084 • USA

Envalior Performance Materials LLC • 111 RIDC Park W Drive, Pittsburgh, PA 15275 • USA

## 1 Controlling Document

- 1.1 The acceptance of Buyer's order is expressly made conditional on Buyer's assent to the terms and conditions set forth herein, and Envalior agrees to furnish goods (the "Product(s)") only upon these terms and conditions.
- 1.2 This document constitutes the entire agreement between the parties. Differing terms and conditions shall require a separate written agreement.
- 1.3 THE TERMS OF THIS AGREEMENT SHALL SUPERSEDE ANY CONFLICTING TERMS CONTAINED ON BUYER'S PURCHASE ORDER OR ANY DOCUMENT OR INSTRUMENT SUBMITTED BY BUYER.
- 1.4 No course of prior or current dealings between the parties and no usage of trade shall be relevant to supplement or explain any term. Photocopies, electronic copies, and facsimile transmissions of documents shall be effective as originals and shall be considered a "writing" between the parties. Acceptance of these Terms and Conditions by Buyer shall be confirmed upon shipment of Product.

## 2 Price and Taxes

- 2.1 Buyer shall pay Envalior the price set forth on the accompanying Sales, Distributorship, or similar Agreement (as applicable, the "Agreement"), or in the event no Agreement exists, the standard price for Products published by Envalior on the date Envalior ships Buyer's order or any price expressly quoted by Envalior in writing to Buyer.
- 2.2 Price lists from Envalior are for general information and do not constitute a binding, open offer from Envalior for the sale of goods. A quote deviating from the standard price list is valid only for an individual order and for the time specified in the quote.
- 2.3 Pricing includes Envalior standard packaging, delivery, and labels. Unless otherwise agreed in writing, pricing does not include applicable federal, state, local, use, excise, or other taxes; customs, duties or any fee imposed by a governmental agency; or special packaging, labeling or delivery as set forth below. If exception from such taxes is claimed, Buyer must provide a certificate of exception at the time of order. In the event Envalior is required to prepay such taxes Buyer will reimburse Envalior for this cost. Envalior reserves the right to change the prices and specifications of its Products at any time unless otherwise agreed to in writing. Additional charges for non-self-entered web-based purchases may apply.

## 3 Shipment

- 3.1 Envalior is committed to meeting Buyer requirements for Product delivery. Any shipping or delivery dates indicated by Buyer or Envalior are estimates only, and Envalior shall have no liability to Buyer for failure to complete

or deliver an order by the date indicated or for any of Buyer's incidental or consequential damages arising from a delay.

- 3.2 Envalior shall ship Product to Buyer in the manner set forth in the Agreement, with packaging and carriers as designated by Envalior unless otherwise specified in writing between the parties.
- 3.3 Envalior's title to Product passes to Buyer upon delivery of Product to the carrier for shipment, with carrier acting as Buyer's agent.
- 3.4 Buyer assumes the risk of loss for Product in transit and shall be responsible for obtaining insurance, if desired. Envalior will not consider any claim for non-conforming Product or shortages ("Non-Conformance") unless Buyer complies with the notice and authorization requirements set forth in section 6.
- 3.5 Buyer may not return Product without Envalior's written authorization. If a return is authorized, Buyer shall return all Non-Conforming Product within ten days after receipt of authorization and shall ship the Product FOB point of destination. Returns of all conforming Product are subject to a restocking charge of 10% computed at original invoice value. If a retest is required, Buyer will be charged an additional \$250 per Product lot.
- 3.6 All Product sought to be returned must be within the lot expiry period and received not later than ninety days after originally shipped by Envalior. There may be additional charge(s) for Special delivery terms; expedited delivery; and deliveries of less than minimum order quantities; specially requested analyses and/or deliveries in Envalior non-standard packages.

## 4 Payment

- 4.1 Payment for Product shall be in accordance with the terms set forth in the Agreement. Regarding payment of price for the Product, time is of the essence. Any overdue payment may be subject to a late payment charge of 1.5% per month or the highest amount permitted by law. Unless otherwise indicated in writing, each shipment shall be considered an independent transaction and payment therefore shall be made accordingly.
- 4.2 All orders are subject to approval of Envalior credit department. If in the judgment of Envalior, the financial condition of the Buyer at any time does not justify continuance of shipment on the terms of payment specified, Envalior may require full or partial payment in advance.
- 4.3 In the event of bankruptcy or insolvency of Buyer, or in the event of any proceeding brought by or against Buyer under insolvency laws, Envalior shall be entitled to cancel any order of the Buyer then outstanding and shall receive reimbursement from Buyer for its costs to date of cancellation. Buyer authorizes Envalior to investigate Buyer's credit and financial standing, and at Envalior's request shall provide Envalior with financial information and individual guaranties before, during or after

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fulfillment of any order. Envalior shall maintain a security interest in the Product (and replacement) delivered hereunder and in the proceeds from the sale and disposition thereof, until Buyer has made payment in full for such Product. Buyer shall, upon Envalior request, execute all documents (such as a UCC-1) necessary to perfect such security interest.

- 4.4 Envalior has the right, upon demand, to repossess goods delivered hereunder if Buyer fails to make timely payments. All payment shall be made without any deduction and free of any set-off or other counterclaim.

### 5 Inspection

- 5.1 Buyer shall be responsible for inspecting and examining all Products shipped hereunder prior to acceptance. Buyer shall give Envalior written notice specifying the alleged Non-Conformance if rejection is intended within five (5) days following delivery to Buyer. Failure by Buyer to provide such written notice of rejection within five (5) days of delivery shall be deemed to be acceptance of the Product by Buyer as of the date of shipment. Any resale, commingling, alteration, or incorporation of the Product by Buyer shall be deemed acceptance of the Product as of the date of shipment.

### 6 Warranty

- 6.1 There are no express warranties hereunder. The Products will meet their published specifications when used in accordance with their applicable instructions and stored correctly.
- 6.2 The liability of Envalior under this agreement is limited, at Envalior's option, solely to replace the Product, or apply an appropriate credit adjustment not to exceed the sales price to Buyer, provided that a) Envalior is promptly (within five days of receipt of allegedly Non-Conforming Product) notified in writing by Buyer setting forth the alleged Non-Conformance, date of purchase, date of receipt, and invoice number, b) Buyer shall set aside and hold such Product without further use or processing until Envalior advises Buyer as to the proper disposition of the Product, and c) the Non-Conforming Product is returned to or inspected by Envalior, and Envalior examines such Product to its satisfaction and determines that such Non-Conformance exists, and was not caused by negligence, misuse, improper storage, or accident. Buyer shall have no right to "cover" by procuring substitute goods at the cost of ENVALIOR.
- 6.3 ENVALIOR MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED. ENVALIOR EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF ENVALIOR. ENVALIOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR ENVALIOR ANY OTHER LIABILITIES. UNDER NO CIRCUMSTANCES SHALL ENVALIOR BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGE, LOSS, OR EXPENSE.
- 6.4 Buyer's remedies under this agreement shall be limited to replacement of the Product that failed to conform to the warranty. This warranty section sets forth the sole

and exclusive remedy against Envalior for the furnishing of Non-Conforming Product. No action may be taken against Envalior for breach of this agreement more than one year after the accrual of a cause of action.

### 7 Product Risk

- 7.1 Buyer acknowledges that it has been adequately warned by Envalior of risks associated with handling, using, transporting, storing, and disposing of the Product, including without limitation those risks set forth in Envalior's Material Safety Data Sheet ("MSDS") for the Product.
- 7.2 Buyer affirms that it shall maintain compliance with all safety and health related governmental requirements concerning the Product purchased hereunder and shall take all reasonable precautions to inform its employees, agents, contractors, and customers of any risks associated with the Product, including without limitation dissemination of pertinent information contained in the MSDS.

### 8 Technical Assistance

- 8.1 Technical assistance, if any, furnished by Envalior in connection with the sale of Product hereunder shall be furnished for the accommodation of Buyer; and Buyer assumes all liability for the proper receipt and application of such information, utilizing Buyer's own technical expertise and know-how. Buyer shall indemnify and hold Envalior harmless from and against any claims, demands, or liability arising out of or in connection with Buyer's receipt and/or use of any technical assistance furnished by Envalior.

### 9 Indemnification

- 9.1 Buyer shall indemnify and hold Envalior harmless from and against all damages, losses, costs (including attorney's fees), expenses, claims, demands, and liabilities arising out of or in connection with the Products, Buyer's use thereof and/or Buyer's use or application of any information disclosed or provided on behalf of Envalior.

### 10 Intellectual Property

- 10.1 All specifications, designs, data, information, methods, patterns, and ideas made, used, conceived, developed or acquired by Envalior incident to its performance under this agreement and all patent, trade-secret, know how, copyright, trademark or other proprietary rights therein shall be the exclusive property of Envalior and no part of the purchase price hereunder shall be deemed applicable to the foregoing unless otherwise agreed to in writing by Envalior.

### 11 Insurance

- 11.1 Buyer agrees to maintain during the term of this Agreement and thereafter until the conclusion of any applicable warranty periods, at its expense commercial general liability insurance from a carrier satisfactory to Envalior, with limits sufficient to satisfy Buyer's obligations, including, without limitation, its obligation to indemnify Envalior under this agreement. Upon request, Buyer shall furnish to Envalior a certificate of insurance liability, evidencing this coverage, and naming Envalior as an

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additional named insured prior to the commencement of this agreement, and annually thereafter, as evidence that such insurance is in full force and effect.

### 12 Obsolescence

- 12.1 Buyer shall reimburse Envalior for all unrecovered inventory costs of raw materials, components, and finished product, should any such inventory become obsolete or unusable in the manufacture of Product within a three-month period after a reduced or cancelled purchase order by Buyer if such inventory becomes obsolete due to changes in processing and/or Product.

### 13 Force Majeure

- 13.1 Envalior shall be relieved of the performance of its obligations for the duration and to the extent that it is prevented in the performance of its obligations by reasons of force majeure. For purposes of this clause, force majeure is defined as circumstances or events which have not been foreseen at the time of entering this transaction, which are not the fault of Envalior, and which prevent the performance of all obligations hereunder and which are not capable of being remedied. Force majeure events include, but are not limited to, acts of God, acts of war, acts of Government, acts of Buyer, inability to obtain necessary labor, materials or manufacturing facilities, unexpected manufacturing interruptions, blockades, revolutions, industrial disputes, and commercial impracticality.

### 14 Allocation

- 14.1 If, for reasons of Force Majeure or otherwise, Envalior is unable to supply contract quantities of Product to all its customers, Envalior may satisfy its obligations under this agreement by allocating to Buyer, in any commercially reasonable manner, its proportionate share of Envalior's available supply of Product, based on the aggregate annual contract obligations and delivery commitments of Envalior to all its then current Product customers.

### 15 Equal Employment Opportunity

- 15.1 Envalior represents that it does not discriminate against any employee or applicant for employment on the grounds of race, color, religion, sex, sexual orientation, or national origin. Envalior takes affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, or national origin. Envalior complies with Executive Order 11246. Envalior's Equal Opportunity certificate is posted at all Envalior facilities. This Equal Opportunity

Clause shall not apply regarding work performed outside the United States.

### 16 Compliance with Laws and Standards

- 16.1 Envalior makes no promise or representation that the Goods shall conform to any law, statute ordinance, regulation, code or standard, unless expressly stated in Envalior's Confirmation or in the Specifications.
- 16.2 Buyer acknowledges that the use of the Products may be subject to requirements or limitations under any law, statute ordinance, rule, code or standard, including, but not limited to, all applicable regulations relating to a) anti-bribery and anti-corruption and b) international trade, such as, but not limited to, embargos, import and export control and sanctioned party lists ("Laws and Standards").
- 16.3 Buyer expressly warrants that employees, agents and subcontractors of the Buyer shall not directly or indirectly a) accept, promise, offer or provide any improper advantage to, or b) enter into an agreement either i) with any entity or person (including officials of a government or a government-controlled entity), or ii) relating to a product, which would constitute an offence or infringement of applicable Laws and Standards.
- 16.4 Buyer shall be exclusively responsible for a) ensuring compliance with all Laws and Standards associated with its intended use of the Products; and b) obtaining all necessary approvals, permits or clearances for such use.

### 17 Assignability

- 17.1 This agreement is personal to the parties hereto and shall not be assigned to any third party by either Buyer or Envalior without the other party's written consent.
- 17.2 Envalior may assign this agreement to an affiliated company, meaning any entity which directly or indirectly controls, is directly or indirectly owned, or controlled by, or under common control with Envalior.

### 18 Law and Jurisdiction

- 18.1 This agreement shall be governed by the laws of Michigan, should Envalior Engineering Materials Inc. be the contracting Envalior party, or Pennsylvania, should Envalior Performance Materials LLC be the contracting Envalior party.
- 18.2 The UN Convention on Contracts for the International Sale of Goods shall not apply.
- 18.3 Any litigation between the parties shall be brought and maintained exclusively in a state or federal court located in Michigan, if Envalior Engineering Materials Inc. is the contracting Envalior party, or Pittsburgh, Pennsylvania, if Envalior Performance Materials LLC is the contracting Envalior party.