

Kent Elastomer Products Terms and Conditions of Sale

1. **Offer and Governing Provisions.** This writing constitutes an offer or counter offer by Kent Elastomer Products, Inc. ("Supplier") to sell the products and/or services described herein ("Products") in accordance with these terms and conditions of sale; it is not an acceptance of any offer made by Customer, and it is expressly conditioned upon assent to all of these terms and conditions of sale. Customer will be deemed to have assented to these terms and conditions unless Supplier receives written notice of any objection within 30 days after Customer's receipt of this form. No additional or different provisions in Customer's purchase order or other communications will be binding upon Supplier unless specifically agreed to by Supplier in writing; failure of Supplier to object to provisions contained in any purchase order or other communication from Customer shall not be construed as a waiver of these terms and conditions nor an acceptance of any of such provisions.

2. **Taxes.** Customer shall be responsible for and pay all excise, sales, use and other taxes, customs duties, and all other fees/costs arising from the sale, transportation, delivery, storage, or use of the Products.

3. **Delivery.** Supplier will use commercially reasonable efforts to fill orders within the time stated herein, but the stated delivery date(s) are approximate only, and Supplier reserves the right to readjust shipment schedules without liability upon reasonable notice to Customer. Acceptance by Customer of the Products waives any claim for loss or damage resulting from a delay, regardless of the cause of the delay. If shipment is delayed or suspended by Customer, Customer will pay the invoice price for the Products as per payment terms when billed by Supplier, together with Supplier's handling, storage, demurrage and similar charges in effect, if any.

4. **Cancellation.** Customer may not cancel orders placed with Supplier, in whole or in part, except with Supplier's prior written consent, and then only if Customer makes payment to Supplier to indemnify it against all losses and liabilities associated with the cancellation, including without limitation expenses incurred and commitments made by Supplier.

5. **Price Adjustments.** Customer may not make or request design changes, reduce quantities ordered, alter the quantities of scheduled individual shipments, or shorten or extend the shipping schedule without Supplier's prior consent. In the event Supplier consents to any of the foregoing, or if the change results in increases in raw material or labor costs for Supplier, then Supplier reserves the right to make any revision in prices on any unshipped balance of Customer's order by giving Customer prompt written notice of the revision in price. The revision will be effective upon notice to Customer unless Customer by written notice refuses such price revision within 10 days of receipt of notice of revision. If Customer refuses Supplier's price revision, Supplier shall have the option of canceling without liability that portion of Customer's order to which the price revision is applicable, or of completing

Customer's order at the original price and subject to the original terms quoted for the order.

6. **Product Specifications.** Customer shall provide to Supplier copies of the specifications ("Specifications") for the Products to be produced. The Specifications shall contain the Product compound, dimension, visual criteria, packaging requirements, shipment method, and other information relating to the manufacture and shipping of the Products. Customer may not make any changes in the Specifications unless Supplier approves of such changes in writing in advance, in which event Supplier may make and Customer shall pay additional charges for such changes; provided, however, that if any such change is required in order to comply with requirements imposed by law, regulation or governmental action, then the approval of Supplier shall not be required, but Customer shall still pay Supplier's additional charges for the changes.

7. **Descriptions.** All weights, measurements, drawings, capacities and other particulars of the Products provided by Supplier, if any, whether contained in plans, photographs, advertising material or otherwise, are only approximate and are included solely for Customer's information. Such particulars do not form part of this agreement, and deviations therefrom or subsequent changes by Supplier are not grounds for non-acceptance of the Products and do not constitute a breach of this agreement.

8. **Materials.** Unless otherwise agreed by Supplier in writing, Supplier is responsible for obtaining the materials, components, and services required by Supplier to manufacture and deliver the Products. Supplier shall not be in breach of any of its obligations hereunder or be liable to Customer as a result of any failure by a component or material supplier to perform its obligations, including without limitation prompt delivery of materials and/or failure of the components or materials to meet the required Specifications.

9. **Risk of Loss.** The Products shall be delivered to Customer at Supplier's facility and risk of loss of or damage to the Products shall shift to Customer at Supplier's dock upon transfer to the carrier; Customer shall maintain adequate insurance coverage on the Products during shipment. Supplier shall not be liable for shipment delays or for any damage or loss occurring after the Products leave Supplier's dock; Customer shall resolve any claims directly with the carriers. If delivery is made in installments, any claims which Customer may have as to any one installment do not relieve Customer of the obligation to accept delivery of the remaining installments, or permit Customer to cancel or rescind the remaining installments.

10. **Product Design.** This agreement provides for Supplier to manufacture the Products to Customer's Specifications or Supplier's standards. If the Products are produced pursuant to Customer's Specifications, Customer acknowledges that Supplier has not designed or tested the Product(s), the individual components or raw materials comprising the Product(s), or the

interaction of individual components and raw materials with one another, nor has Supplier recommended any component or raw material supplier, and Supplier shall not be liable for any of the foregoing. Because the Products are manufactured to Customer's Specifications, SUPPLIER DOES NOT WARRANT THAT THE PRODUCTS WILL BE DELIVERED FREE OF THE RIGHTFUL CLAIMS OF THIRD PERSONS BY WAY OF INFRINGEMENT OR THE LIKE, and Customer shall hold Supplier harmless against any claims arising out of compliance with the Specifications.

11. **Warranty.** Supplier warrants to Customer that each Product shipped to Customer will be new and free from defects in material or workmanship that are caused by Supplier. This warranty shall expire with respect to each Product on the date that is one year after that Product is shipped from Supplier's dock. Supplier's sole liability, and Customer's exclusive remedy, in the event of a breach of this warranty shall be, at Supplier's option: (A) repair; (B) replacement of the defective Product; or (C) refund to Customer of the purchase price paid by it for the defective Product. This warranty shall not apply to defects arising from compliance with the Specifications, or defects in material or components not reasonably ascertainable upon reasonable inspection, or defects caused by accident, misuse or abuse.

12. **Disclaimer.** THERE ARE NO OTHER WARRANTIES OTHER THAN THE WARRANTY SET FORTH IN SECTION 11. SUPPLIER DISCLAIMS ANY AND ALL OTHER WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

13. **Limitation of Liability.** Supplier's liability and Customer's remedies with respect to Products shall be limited solely and exclusively to the remedy for breach of warranty expressly provided in Section 11. IN NO EVENT SHALL SUPPLIER BE LIABLE UNDER ANY CIRCUMSTANCES: (A) FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR LABOR COSTS); (B) FOR PRODUCTS THAT HAVE BEEN INCORPORATED INTO ANOTHER GOOD OR ITEM; OR (C) FOR ANY OTHER LOSS, CLAIM, OR LIABILITY WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESS OR IMPLIED), CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORY OF LIABILITY. IN NO EVENT SHALL THE LIABILITY OF SUPPLIER EXCEED THE PURCHASE PRICE OF THE PRODUCTS SOLD HEREUNDER.

14. **Responsibility.** Customer shall indemnify and defend Supplier against any and all damages, expenses (including reasonable attorneys' fees and costs), losses, suits, claims, demands and liabilities arising out of any act, omission, misrepresentation, negligence, or breach of this Agreement by

Customer or out of the distribution, sale or use of Products furnished hereunder after delivery to Customer.

15. **Obsolete Inventory.** Customer shall reimburse Supplier for raw material or component inventory carrying costs of obsolete inventory and the cost of warehousing said inventory. Customer shall purchase from Supplier at Supplier's cost any materials or components that are made obsolete by any change in the Specifications or otherwise. Customer shall purchase finished Products that become obsolete as a result of reformulation, relabeling, or repackaging, at a price equal to the price in effect on the date of the purchase order against which such Products were manufactured. Amounts due under this section shall be paid within established terms after a raw material, component or finished good becoming classified as slow moving or obsolete.

16. **Force Majeure.** Supplier shall not be liable for any loss, damage or delay resulting from causes beyond its reasonable control, including, without limitation, strikes or labor difficulties, acts or omissions of any governmental authority or of Customer, insurrection, war, acts of terrorism, fires, floods, acts of God, breakdown of essential machinery, accidents, embargoes, material shortages, delays in transportation, lack of production capacity or inability to obtain labor, materials or parts from usual sources. In the event of any such delay, performance will be postponed by such length of time as may be reasonably necessary to compensate for the delay. In the event performance by Supplier cannot be accomplished by Supplier due to any governmental action or any laws, rules or regulations, Supplier may, at its option, terminate the affected order(s) without liability.

17. **Governing Law.** This agreement shall be governed by and construed according to the internal laws of the State of Ohio.

18. **Assignment.** The rights and duties of Supplier and Customer are not assignable or delegable, whether voluntarily or by operation of law, by either party without the other party's prior written consent, except that Supplier may assign or delegate this agreement, or any portion hereof, to an affiliate or subsidiary without Customer's consent.

19. **Confidentiality.** Any non-disclosure or confidentiality agreement previously executed by the parties and still in effect shall be incorporated herein by reference.

20. **Headings.** All headings and captions contained herein are for convenience of reference only and are not a part of these terms and conditions, and shall have no effect on the construction or interpretation of these terms and conditions or any paragraph or provisions hereof.

21. **Entire Agreement.** This writing constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior oral or written understandings, representations and agreements between Supplier and Customer relating to this subject matter. This agreement may not be amended, supplemented or modified except by a writing signed by both Customer and Supplier.