

USA & Ireland - Terms and Conditions of Sale

1. Acceptance. The division, affiliate or subsidiary of Illinois Tool Works Inc. that references these Terms (including ITW Performance Polymers, a division of Illinois Tool Works Inc.) is herein referred to as "ITW," and the customer purchasing products ("Products") or services ("Services") from ITW is referred to as ("Purchaser"). These terms and conditions of sale ("Terms"), any ITW quotation, acknowledgment or invoice, all Product Documentation (as defined below) and all other documents or forms prepared or delivered by ITW or incorporated by specific reference herein or therein ("ITW Documents" and together with these Terms, the "Agreement"), constitute the complete terms governing the sale of Products and Services. "Product Documentation" means the Technical Data Sheet, Product Data Sheet, Safety Data Sheet, and Product Label associated with each Product. ITW may update these Terms at any time without prior notice. For the current version of these Terms, visit <https://itwperformancepolymers.com/>. The current version of these Terms shall apply to all shipments made after such website has been updated. ITW HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS OR ON PURCHASER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. These Terms are applicable to all sales of Products and/or Services, all ITW Documents, and all purchase orders ("Purchase Orders") from Purchaser. No site usage agreement or any other click through agreement on a website will have any applicability or binding effect, whether or not ITW clicks on an "ok," "I accept," or similar acknowledgment. Commencement of any work by ITW or Purchaser's acceptance of delivery of any Products or Services will manifest Purchaser's assent to the Agreement. Additional or different terms applicable to a particular sale may only be specified in the body of an ITW Document or expressly agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms expressly agreed to in writing and executed by an authorized officer of ITW; (b) Product Documentation (as it applies to the specific Product referenced therein), (c) ITW Document terms; (d) these Terms. Notwithstanding anything contained in the foregoing to the contrary, if a reference to these Terms is contained in any ITW Document or writing executed by an authorized officer of ITW, these Terms shall take precedence over any conflicting or contrary terms. For purposes of these terms, the applicable ITW Location (where ITW is "Located") shall be deemed to be the country of the ITW's facility from which the applicable Products are shipped or Services are performed.

2. Quotations. Quotations are only valid in writing and for 30 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Purchaser. Quotations are made subject to approval of Purchaser's credit. ITW may refuse orders and has no obligation to supply Products or Services unless ITW issues an order acknowledgement or upon the shipment of Products or commencement of Services.

3. Prices and Payment Terms. Prices are in U.S. Dollars and are subject to change without prior notice for any reason. In addition, if a raw material, component, or service provider raises its prices, or imposes a surcharge on ITW, or if the cost of any of ITW inputs into the Products or Services increase, ITW reserves the right to increase prices and/or surcharge Purchaser, and Purchaser agrees to accept such price increase or surcharge until the term of such cost increase or surcharge or until the termination of the contract to which these terms and conditions apply is reached. Time of payment is of the essence. All orders are accepted subject to ITW's price in effect at time of shipment. If Purchaser objects to any price increase (regardless of the amount or cause of such increase), or if Purchaser refuses to provide a new purchase order reflecting such price increase, ITW may, at its option, stop any or all future shipments of Products (regardless of whether such price increase affects such Products). Prices do not include any sales, use, value-added or other taxes, import duties, license fees or like charges ("Fees") related to the sale, importation or use of Products or Services, and Purchaser is responsible for those Fees. If ITW is subsequently required to pay any Fees, Purchaser shall fully defend and indemnify ITW therefor. Terms of payment are 30 days net from the date of ITW's invoice. In the event of Purchaser's failure to pay ITW's invoice(s) or of any late invoice payments by Purchaser, ITW reserves the right to take any or all of the following actions: (a) any actions allowable under law; (b) withhold shipment of any Products or performance of any Services; (c) demand the return of previously shipped goods; (d) institute new payment terms; and/or (e) cancel any purchase orders. In addition, overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by governing law. Purchaser's inspection rights herein

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will not affect the payment terms. Purchaser must notify ITW within 90 days of receiving any invoice of any errors, inaccuracies or mistakes included thereon, and Purchaser agrees that after 90 days, it waives any and all claims against ITW related to any such errors, inaccuracies or mistakes. Under no circumstances will Purchaser have a right of set-off. ITW shall have the right to offset its payables against its receivables related to goods or services purchased from ITW. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify ITW for all associated costs incurred by ITW, including reasonable attorney fees and court costs. Purchaser is expressly forbidden from debiting or invoicing ITW for any sums, amounts or damages which ITW has not expressly acknowledged as being its responsibility to pay. Any amount so debited or invoiced shall be deemed to be a failure by Purchaser to pay ITW's invoice(s) in the amount of such debit or invoice.

4. Credit Approval. All shipments are subject to approval by ITW's credit department. ITW may invoice Purchaser and recover for each shipment as a separate transaction. If, in ITW's sole judgment, Purchaser's financial condition is or becomes unsatisfactory, then ITW may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance; and/or (b) terminate any or all of Purchaser's purchase orders.

5. Cancellation or Modification. ITW may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of ITW's Products or Services upon reasonable prior written notice to Purchaser. Once ITW has accepted a purchase order or begun taking actions with respect to a purchase order, Purchaser cannot cancel or modify that purchase order except with ITW's written consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits. All estimates and forecasts (including all EDI releases) provided by Purchaser become firm Purchase Orders at the applicable Product's stated lead-time (as specified in the ITW Documents or as otherwise communicated by ITW to Purchaser from time to time).

6. Inspection / Non-Conforming Shipments. Purchaser may inspect Products for a period of 3 days after delivery ("Inspection Period"). Purchaser must notify ITW in writing of any Products that do not conform to the specifications applicable to their sale within the Inspection Period and afford ITW a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide ITW such written notice within the Inspection Period, Purchaser will be deemed to have accepted the Products. Notwithstanding the foregoing, for any defects visible at the time of delivery (including, without limitation, damaged packaging, broken crates, incorrect quantities, etc.), Purchaser must note such defect on the Bill of Delivery concurrently with its receipt of such delivery, and if Purchaser does not update the Bill of Delivery accordingly, Purchaser waives all claims arising from or related to such visible defects. Any variation in quantities shipped over or under those ordered (not to exceed 10%) will constitute compliance with Purchaser's order, and the stated price per item will continue to apply.

7. Delivery. ITW anticipates use of common carriers for shipment of Products. Orders will be shipped prepaid and added to the invoice, and all Products will be shipped ExWorks ITW's facility (Incoterms 2020). Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser. ITW may ship items in a single or multiple shipments. Title to the Products shall pass to Purchaser upon delivery to the carrier. Purchaser assumes all risk and liability for loss and use or misuse by third parties who acquire or use the Products illicitly after delivery to the carrier. Purchaser must notify ITW and the delivering carrier within 1 business day from date of receipt of Products, of any damage or shortage, and afford ITW a reasonable opportunity to inspect the Products. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account, and claims for such loss must be made solely against the carrier.

8. Returns. Purchaser may not return any Product without ITW's prior written authorization, which ITW can withhold in its sole discretion.

9. Limited Warranty. ITW warrants that it will convey the Products free and clear of all liens, security interests and encumbrances created by, through or under ITW. ITW further warrants that for a period of (subject to the below) 3 months (subject to the below) from the date of delivery to the common carrier (the

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“Warranty Period”), under normal use and given proper installation and maintenance as determined by ITW, the Products: (a) will conform to the physical properties in the Product’s Technical Data Sheet (or Product Data Sheet) and to ITW’s published written specifications, if any; and (b) will be free from substantial defects in material and workmanship. Product Documentation may set forth a different Warranty Period for any given Product, and the Warranty Period specified on a Product’s Product Documentation shall control. Notwithstanding the foregoing, if any Product Documentation lists a Product “shelf life,” expiration date, “use by date,” or any similar designation, such period shall constitute the Warranty Period for such Product.

In the event of a breach of the warranties set forth above (the “Warranties”), ITW’s sole liability and Purchaser’s sole remedy will be (at ITW’s option), for ITW to repair, replace or credit Purchaser’s account for, any Product that fails to conform to the Warranties, provided that (i) during the Warranty Period ITW is promptly notified in writing upon discovery of such failure with a detailed explanation of any alleged deficiencies; (ii) ITW is given a reasonable opportunity to investigate all claims; and (iii) ITW’s examination of such Product confirms the alleged deficiencies and that the deficiencies were not caused by normal wear and tear, accident, misuse, use with any equipment or tools other than any “approved equipment” or “approved tools” specified on any Product Documentation, if applicable, neglect, improper installation, unauthorized alteration or repair, improper testing, or noncompliance with any instructions, warnings, requirements or specifications included on any Product Documentation. Any additional limitation or exclusion contained in any Product Documentation are incorporated herein.

The Warranty against defects does not apply to: (1) consumable components or ordinary wear items; or (2) use of the Products with equipment, components or parts not specified or supplied by ITW or contemplated under the Product Documentation.

EXCEPT AS SET FORTH ABOVE IN THIS SECTION 9 AND IN SECTION 10 BELOW, ITW MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE).

10. Service Warranty. For Services performed by ITW, where applicable, ITW warrants that (a) it will perform Services in a timely, competent and professional manner and in accordance with industry standards; and (b) the Services shall conform to any applicable specifications or statement of work. Purchaser’s sole remedy, and ITW’s sole liability, for a breach of the foregoing warranty is for ITW, at its option, to re-perform the Services or credit Purchaser’s account for such Services.

11. Limitation of Liability and Remedies. ITW IS NOT LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST ITW, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON ITW’S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. ITW WILL NOT BE LIABLE TO PURCHASER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE. IN NO EVENT WILL ITW’S LIABILITY IN CONNECTION WITH THE AGREEMENT OR SALE OF ITW’S PRODUCTS OR SERVICES EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE. Notwithstanding the foregoing or anything else to the contrary, if ITW is Located outside of the United States, nothing in this Agreement shall exclude, limit or restrict the liability of either party in respect of (i) death or personal injury arising from negligence; or (ii) any fraud or fraudulent misrepresentation; or (iii) gross negligence and willful misconduct; or (iv) to the extent such limitation or exclusion is not permitted by law.

12. Product Use. Purchaser is solely responsible for determining if a Product is fit for a particular purpose and suitable for Purchaser’s method of application. Accordingly, and due to the nature and manner of use of ITW’s Products, ITW is not responsible for the results or consequences of use, misuse or application of its Products. All physical properties, statements and recommendations are either based on the tests or experience that ITW believes to be reliable, but they are not guaranteed.

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13. Tooling/Molds/Dies. All material, equipment, facilities and special tooling (including tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment and manufacturing aids and replacements thereof) used in the manufacture of the Products will remain the property of ITW. Any material, tooling or equipment furnished to ITW by Purchaser will remain the property of Purchaser with title to and right of possession remaining in Purchaser.

14. Consignment. If Products are sold on a consignment basis, title in such Products will not pass to Purchaser until the earlier of: (a) the time the Product is removed from inventory for use; or (b) the date that is 90 days from the Product's shipment date. ITW will have a purchase money security interest in consigned Products and may file a financing statement in accordance with the Uniform Commercial Code. Purchaser agrees to store consigned Products in a segregated area and will install and/or maintain any signs or other devices to clearly identify the Products as ITW Products. Purchaser assumes the risk of loss of all consigned Products. Purchaser shall insure consigned Products at Purchaser's expense in amounts at least equal to the replacement value.

15. Ownership of Intellectual Property. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Purchaser by ITW and all rights therein (collectively, "Intellectual Property") will remain the property of ITW and will be kept confidential by Purchaser in accordance with these Terms. Purchaser has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to ITW upon request from ITW. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use ITW's Products or receive the Services purchased from ITW.

16. Use of Trademarks and Trade Names. Purchaser shall not use, directly or indirectly, in whole or in part, ITW's name, or any other trademark or trade name that is now or may hereafter be owned by ITW (collectively the "Trademarks"), as part of Purchaser's corporate or business name, or in any way in connection with Purchaser's business, except in a manner and to the extent authorized herein or otherwise approved by ITW in writing. Purchaser hereby acknowledges ITW's ownership of the Trademarks and the goodwill associated therewith. Purchaser shall not infringe upon, harm or contest the validity of any Trademarks. Purchaser shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Products pursuant to the terms of the Agreement. Purchaser shall reproduce the Trademarks exactly as specified by ITW. Purchaser shall not use the Trademarks in combination with any other trademarks or names. Purchaser agrees that it will not register or attempt to register any Trademark or any colorable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Purchaser shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Purchaser shall provide reasonable cooperation to ITW with respect to any efforts of ITW to protect, defend or enforce its rights to the Trademarks. Should Purchaser cease being an authorized customer of ITW for any reason, Purchaser shall immediately discontinue any formerly permitted use of ITW's name or the Trademarks.

17. Confidential Information. All information furnished or made available by ITW to Purchaser in connection with the subject matter hereof shall be held in confidence by Purchaser. Purchaser agrees not to use (directly or indirectly), or disclose to others, such information without ITW's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by ITW; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to ITW with respect to such information.

18. Audit. Unless agreed to in writing by an officer of ITW, neither Purchaser nor any Purchaser representative, may examine or audit ITW's cost accounts, books or records of any kind or any matter, or any other data that ITW, in its sole discretion, considers confidential or proprietary.

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19. Infringement and Indemnification. Except as set forth below, ITW agrees to defend and indemnify Purchaser against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of ITW's proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Purchaser supplies ITW written notice of such Claim immediately after the Purchaser has notice of such Claim, (b) Purchaser cooperates with ITW in the defense and settlement of such Claim; and (c) Purchaser allows ITW the right to defend and settle such Claim at ITW's expense. If a suit or claim results in any injunction or order that would prevent ITW from supplying any part or Product falling under the Agreement, or if the result of such a suit or claim would, in the reasonable opinion of ITW, otherwise cause ITW to be unable to supply such parts or Products, ITW may do one or more of the following: (i) secure an appropriate license to permit ITW to continue supplying those parts or Products; (ii) modify the appropriate part or Product so that it becomes non-infringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if ITW cannot reasonably accomplish the actions specified in subsections (i) – (iii), then in ITW's sole discretion, ITW may discontinue selling the part or Product without any further liability to Purchaser. Notwithstanding the foregoing, ITW shall have no liability or duty to defend and indemnify Purchaser against any Claim relating to: (1) the use of any part or Product, (2) the combination of any part or Product with any other part or product not supplied by ITW, or (3) any part or Product or process that is designed or specified by Purchaser. Purchaser hereby releases and agrees to indemnify ITW and its affiliates from all infringement claims (including any related damages, liabilities and attorneys' fees, court costs, and associated expenses) relating to or arising from any part, Product or process (or any portion thereof) that is designed or specified by Purchaser, including all private-label Products specified by Purchase and all "build-to-print" (or similar designations) Products.

20. ITW Employees. ITW sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Purchaser documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on ITW or such ITW employees.

21. Service Terms. The following terms and conditions apply to any on-site Services provided by ITW:

A. Services will be provided at ITW's then current service rates.

B. Purchaser shall prepare the site for the Services. If the site is not prepared for the Services upon ITW service personnel's arrival at the agreed upon time and date for Services, ITW may charge Purchaser for any delay and/or travel time at ITW's regular service rates.

C. Purchaser shall provide ITW with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses, that are applicable to Purchaser's local jurisdiction.

D. ITW may refuse, without any liability, to provide Services and to allow ITW service personnel to suspend Services or vacate any site where, in ITW's opinion, performance of Services would pose a risk to the safety of any person. In such event, Purchaser is responsible for payment of any delay and/or travel time at ITW's regular service rates.

E. Purchaser is solely liable for all damages or injuries caused or contributed to by Purchaser that may occur on the site, except to the extent damages or injuries are directly caused by the gross negligence or willful misconduct of ITW service personnel.

F. Purchaser must provide at least 24 hours' notice of cancellation of any Service order. If Purchaser cancels with less than 24 hours' notice, Purchaser is responsible for any costs incurred by ITW caused by such cancellation.

22. Compliance. Purchaser agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Purchaser's obligations hereunder and Purchaser's use of the Products and Services, including import/export laws, labor laws and anti-corruption laws.

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23. Relationship of the Parties. Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.
24. Force Majeure. ITW will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of “Force Majeure”), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of ITW’s employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable ITW to perform.
25. Assignment; Binding Effect. No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement or any Purchase Order may be made without ITW’s prior written consent. Any attempted assignment will be void. ITW may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.
26. Waiver. In the event of any default by Purchaser, ITW may decline to ship Products or provide Services. If ITW elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, ITW’s actions will not constitute a waiver of Purchaser’s default or any other existing or future default, or affect ITW’s legal remedies.
27. Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.
28. Limitation of Actions/Choice of Law/Litigation Costs.
 - A. If ITW is Located in the United States, (i) any dispute arising out of or related to the Agreement or the sale of any Products or Services will be governed by and construed according to the laws of the state of Illinois (excepting its conflict of laws provisions and the United Nations Convention for International Sale of Goods) and litigated exclusively in a state or federal court located in Cook County, Illinois and (ii) each of Buyer and Seller expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction.
 - B. If ITW is Located outside of the United States, (i) any dispute arising out of or related to the Agreement or the sale of any Products or Services will be governed by and construed according to the laws of the country in which Seller is Located (excepting its conflict of laws provisions and the United Nations Convention for International Sale of Goods), (ii) any such dispute will be finally resolved by a panel of three arbitrators in accordance with the Rules for Arbitration of the London Court of International Arbitration; (iii) judgment upon the award rendered by such arbitrators may be entered by any court having jurisdiction thereof; (iv) the place of arbitration and the language of arbitration will be selected by Seller; (v) either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved; and (vi) the award shall be final and binding on both Seller and Purchaser, and the parties hereby waive the right of appeal to any court for amendment or modification of the arbitrators’ award.
 - C. If either party commences litigation or mutually agreed upon alternative dispute resolution concerning any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney’s fees in such litigation or mutually agreed upon alternative dispute resolution, provided that if each party prevails in part, such fees will be allocated in the manner as the court or arbitrator determines to be equitable in view of the relative merits and amounts of the parties’ claims.
29. Survival. Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.
30. Severability. If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.

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31. Integration and Modification. The Agreement constitutes the entire agreement between ITW and Purchaser with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.