

## **Foss Performance Materials Terms and Conditions of Sale**

- 1. Terms Applicable:** This quotation or sales order acknowledgement and Foss Performance Materials, LLC ("FPM")'s sale of Products and /or provision of Services described in Buyer's purchase order issued in whole or in part in response to this quotation or in response to which this sales order acknowledgement is issued are expressly limited to and expressly made conditional on, Buyer's acceptance of the FPM Terms and Conditions of Sale listed below, which are the exclusive terms and conditions upon which FPM ("Seller") will accept a purchase order for the sale of goods and/or the provision of services ("Goods" and "Services") (collectively, the "Terms"). These Terms may only be varied or waived by a written agreement signed by Seller. If Seller's Terms differ from the terms of any offer made or order placed by Buyer, then any subsequent communication from Seller constitutes a counter offer and not acceptance of Buyer's terms. Any quotation is given by Seller on the basis that no agreement shall come into existence until Seller issues a written sales order acknowledgment to Buyer. Any provision or condition of Buyer's purchase order or other document which is in any way different from (or in addition to) Seller's Terms is specifically rejected and will not be binding on Seller. Buyer's acceptance of Seller's Terms will be conclusively presumed if Seller doesn't receive Buyer's objection(s) within 3 business days from the date of Seller's Sales Order Acknowledgement. The term "Agreement" as used herein means this quotation or acknowledgment of Buyer's purchase order, together with any attachment thereto, any documents expressly incorporated by reference (but excluding any Buyer terms and conditions attached thereto or incorporated therein by reference), and these Terms and Conditions of Sale.
- 2. Delivery, Inspection & Acceptance:** Unless Seller specifies otherwise in writing, all deliveries will be made FCA Seller's manufacturing facility (Incoterms 2010) and title and risk of loss shall pass to Buyer at that point. Delivery or performance dates are good faith estimates and do not mean that "time is of the essence." Seller is entitled to make partial deliveries or deliveries by installments and these Terms will apply to each partial delivery. Seller is responsible for delivery to one location only. Any transportation to a second location (for example from a warehouse to a plant) is at Buyer's expense. Buyer shall examine and inspect the Goods within ten (10) days after receipt and before use or resale and shall give Seller prompt written notice of any alleged nonconformity. Buyer's use or resale of Goods shall be deemed acceptance as conforming to this Agreement. All claims of any kind, nature or descriptions are barred and waived unless made in writing. Buyer shall be deemed to have accepted the Goods, and any right to cancel, reject, or claim damages shall expire, and Buyer shall lose and waive any right to rely upon or claim nonconformity of the Goods, unless Buyer's written and particularized claim is received by Seller (a) within ten (10) business days after receipt of the Goods for all claims other than latent defects or (b) within ninety (90) days after receipt of the Goods for a latent defect; provided, however, that in no case shall any claim be considered after Goods have been dyed, finished, cut, or processed in any manner by Buyer or third parties.
- 3. Price:** All prices are as stated in Seller's sales order acknowledgement, and apply only in relation to the total quantities and dates and rates of delivery quoted. All prices are subject to the addition of all other duties and taxes. Seller reserves the right, by giving written notice to Buyer at any time before delivery, to adjust the price of the Goods to take account of increases in the cost to Seller which are due to any factor beyond Seller's controls, including but not limited to costs of components or equipment not manufactured by Seller, raw materials, general commodities, freight, insurance, rates of currency exchange, duties, taxes or surcharges or improvements.
- 4. Intellectual Property:** All intellectual property rights in the Goods (including without limitation any and all patent rights, design rights, and copyrights, whether registered or unregistered, in the specification(s) and design(s) of the Goods or manufacturing processes) shall, as between Seller and Buyer, be Seller's property. All drawings, descriptions, specifications, designs, documents and other information (including without limitation features contained in any of the foregoing or in any objects or software), whether business or technical, (together, "Information") supplied or otherwise disclosed by Seller will be supplied or disclosed on the express understanding that such supply or disclosure will not be construed as granting to Buyer, expressly or by implication, estoppel, or otherwise, any license under any invention, patent, copyright, trademark, or trade secret (or any other rights whatsoever) in such Information.



## Performance Materials

5. **Warranty:** For all Goods sold as first quality, Seller warrants that its Goods are manufactured according to Seller's specifications and are free from defects in material and workmanship under normal use. All other Goods sold hereunder, including Goods sold as "Seconds," "Aged," "Off-Quality," or "Discontinued Lines" are sold "AS IS." Seller makes no representation or warranty beyond any express written statements contained in the Terms as to the flammability characteristics of the Goods, or that the Goods, or any item, article or product containing or incorporating the Goods, conform to applicable flammability standards, if any, or have been tested for conformity thereto. Buyer's failure to obtain an explicit warranty of flammability and testing in the Agreement prior to delivery of the Goods shall relieve the Seller of any liability associated with the failure to provide said information. Buyer acknowledges that subsequent finishing treatment, use in composite structures, or other alteration of the Goods can adversely affect the Goods' flammability characteristics and that, under some conditions, the Goods will burn and therefore caution should be used near sources of heat or flame. The obligation under this limited warranty is limited to replacing, during a period of 45 days after delivery, any Goods, at Seller's option, either returned to Seller or inspected by Seller, which, upon examination shall disclose to the reasonable satisfaction of Seller to have been defective. Seller further warrants to Buyer that, at delivery, the Goods manufactured by it will be free of any liens or encumbrances. If there are any such liens or encumbrances, Seller will cause them to be discharged promptly after notification from Buyer of their existence. Seller assumes no responsibility for consequential damages of any kind (including, without limitation, lost production time, lost sales or profits or machine damage) that may result from the use or misuse of Seller's Goods. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY GOODS OR SERVICES ARE SPECIFICALLY DISCLAIMED.
6. **Limitation of Liability:** In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Goods, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature resulting from, arising out of or connected with the Goods, Services, or this Agreement or from the performance or breach hereof. Seller's total liability for all claims of any kind arising from or related to the formation, performance or breach of this Agreement, or any Goods or Services sold or provided, will not exceed the (i) Price for the individual Goods or Services at issue, or (ii) if Buyer places multiple order(s) under the Agreement, the Price of each particular order for all claims arising from or related to that order. Seller will not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers for any of the foregoing types of damages.
7. **General Indemnification:** Seller agrees to defend and indemnify Buyer from and against any third-party claim for bodily injury or damage to tangible property ("Loss") arising in connection with the Products or the Services provided by Seller hereunder, but only to the extent such Loss has been caused by the negligence, willful misconduct or other legal fault ("Fault") of Seller. Buyer shall promptly tender the defense of any such third-party claim to Seller and will advise and consult with Seller and Seller's attorney. Seller shall be entitled to control the defense and resolution of such claim and the selection of legal counsel, provided that Buyer shall be entitled to be represented in the matter by counsel of its choosing at Buyer's sole expense. Notwithstanding the foregoing, where such Loss results from the Fault of both Seller and Buyer or a third party, then Seller's defense and indemnity obligation shall be limited to the proportion of the Loss that Seller's Fault bears to the total Fault.
8. **Patent Indemnity:** Seller warrants that all Goods will be delivered free of the rightful claim of any third person by way of infringement of any patent, which claim is based on either the construction of such Goods or its use for its intended purposes by Buyer. Seller will defend at Seller's expense every suit or claim for infringement based on such construction, sale or use brought against Buyer, so long as timely notice of such suit or claim and control of its defense and settlement is given to Seller, and will indemnify and hold harmless Buyer against all resulting judgments or the cost of settlement of such suit or claim. In case any Goods or any part thereof is held to constitute an infringement and the use thereof is enjoined, Seller will, at its option, (i) procure for Buyer the right to continue using such Goods, (ii) modify it so that it becomes non-infringing or (iii) grant Buyer a credit for



## Performance Materials

the purchase price of such Goods. Seller will not be liable to Buyer if any patent infringement or claim thereof is based upon the use of the Goods in combination with any materials where such infringement or claim thereof would not have occurred from the normal use for which the Goods were designed. Seller shall have the sole right to choose legal counsel and to conduct control, settle or compromise such proceeding. The foregoing states Seller's entire liability, and Buyer's sole and exclusive remedy, for patent infringement and is in lieu of all other express and implied warranties thereto.

9. **Payment:** Unless otherwise agreed in writing, all payments shall be made in full, without deduction or withholding, within 30 days of date of invoice and will be free of setoff or counterclaim by Buyer. Failure to make payment in accordance with the terms agreed will, without prejudice to any other remedies Seller may have, render Buyer liable to pay interest in an amount of one and one-half percent (1.5%) upon the total sums outstanding from the date of delivery (but not more than the maximum rate of interest allowed by applicable law), such interest accruing on a daily basis and being payable on demand. "Time is of the essence" for payment under this Agreement. Delinquent accounts may result in a loss of credit terms.
10. **Taxes:** The quoted prices of the articles do not include any present or future sales, use, excise, manufacturing, or processing tax, or any other tax or charge, that is or may be imposed on the articles on this order or on subsidiary articles or materials incorporated therein. Any such taxes or charges will be added to the invoices as separate items unless appropriate exemption certificates are furnished to Seller by Buyer.
11. **Cancellation:** Orders are not subject to cancellation by Buyer without Seller's written consent. Where Seller does consent to cancellation, settlement will be made on the following basis: Buyer will pay to Seller upon delivery, the full purchase price of all Goods completed at the time Seller agreed to cancellation. If Seller elects to complete any part or all of the Goods scheduled for delivery within (30) days from such time, the full purchase price of all Goods so completed will be paid to Seller upon delivery. If, within (60) days from the presentation of such invoice, Buyer does not instruct Seller as to the disposition of the Goods, arising from the cancellation, Seller may sell the same, crediting Buyer for the proceeds. Buyer will further pay to Seller a percentage of the purchase price of all other Goods as a percentage of completion to be determined by Seller's normal accounting method. Invoices for all charges in excess of deliverable Goods are payable immediately upon presentation. Seller will defer manufacture or delivery of any Goods which Buyer desires to cancel only if and to the extent agreed to in writing by Seller.
12. **Default:** If (i) Buyer shall fail to pay promptly when due any sum owing to Seller or to perform any obligation to Seller, (ii) Buyer shall become insolvent or bankrupt or make an authorized assignment or a proposal to Buyer's creditors or if a bankruptcy petition is filed or presented against Buyer or any proceedings are commenced under applicable bankruptcy law for the appointment of a trustee or receiver of any of Buyer's property, or (iii) Seller shall reasonably believe that Buyer is unable to meet Buyer's debts as they mature, then, and in any such event, Seller may, in addition to the exercising of any or all other rights that Seller may have, require payment of cash upon delivery, and/or Seller may, upon written notice to Buyer at any time, terminate all Seller obligations under any or all purchase orders. Upon any termination pursuant to this clause, Buyer shall thereupon become obligated to pay Seller the same sum in respect to each such purchase order as if such purchase order had been cancelled by Buyer with Seller's consent and settlement had been made on the basis set forth in Paragraph 11 of these Terms.
13. **Compliance with Laws:** The parties agree to comply with all applicable laws, orders and regulations in the relevant jurisdiction(s).
14. **Governing Language:** Regardless of whether a copy of this Agreement is translated into another language, the official version hereof shall be the English language version, which shall prevail in all cases. All correspondence and communications between the parties, or reports, orders, shall be in English.
15. **Acts of God/Force Majeure:** Notwithstanding any other provision hereof, Seller will not be liable for delay in its performance or for non-performance in whole or in part of its obligations under this Agreement directly or indirectly resulting from causes beyond its control including, but not limited to, acts of God, Buyer's acts or omissions, or the acts or omissions of a third party.
16. **Governing Law:** This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the State of Delaware, USA without regard to its conflict of laws provisions. It is specifically



## Performance Materials

stated and agreed by the parties hereunder that the UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and is specifically excluded therefrom.

17. **Miscellaneous:** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements between the parties and their predecessors relating to the sale of Goods and Services, whether written or oral or based on a course of dealings or a course of performance. Except as expressly provided herein, no future agreements or understandings in any way modifying or supplementing this Agreement will be binding on either party unless confirmed in writing and signed by a duly authorized officer of both parties. The parties agree that these terms and conditions will prevail, notwithstanding contrary terms in any purchase order(s) or other documents issued by Buyer relating to the purchase of Goods and Services. Neither this Agreement, nor any of the rights, or obligations of either party is assignable or transferable directly or indirectly, in whole or in part, without the prior written consent of the other party, except both parties may assign this Agreement to any wholly owned subsidiaries.
18. **Canadian Contracts:** When delivered into Canada this provision shall apply. **English Language.** The parties acknowledge that they have required that this Agreement as well as all documents, notices and legal proceedings executed, given or instituted pursuant to or relating directly or indirectly hereto be drawn up in English. Les parties reconnaissent avoir exigé la rédaction en anglais de la présente convention ainsi que tous documents exécutés, avis donnés et procédures intentées directement ou indirectement à la suite de ou relatif à la présente convention.
19. **CONSUMERS:** Where Buyer is considered a "consumer" under applicable law, any explicit written "consumer" warranty provided and any warranties or guarantees required under applicable law shall apply instead of those provided in Section