

# Dymax Engineering Adhesives Ireland Limited General Terms and Conditions of Sale

## 1. Application

(1) These general terms and conditions of sale, together with any order confirmation shall constitute the entire agreement between the purchaser of the goods supplied by us (the "Purchaser") and us (the "Agreement"). Differing or contrary terms shall not apply except if otherwise expressly agreed upon in writing by the parties. Without prejudice to the generality of the foregoing, these general terms and conditions of sale shall apply to the exclusion of any terms and conditions which the Purchaser may purport to apply at any time, whether contained in any agreement, quotation, offer, acknowledgement or otherwise.

(2) These general terms and conditions of sale shall govern all future transactions between the parties and shall apply if we perform delivery despite our knowledge of differing or contrary terms.

(3) These general terms and conditions of sale shall apply to all goods and materials to be supplied by us to the Purchaser (the "Goods") to be delivered after the date of these terms and conditions notwithstanding that any order confirmation was issued prior to the same date.

## 2. Prices, Payment

(1) The price of the Goods is net "ex works" and valued added tax will be added.

(2) In consideration of the Goods, the Purchaser agrees to make payments to us in the manner and terms set out hereunder.

(3) We shall be entitled to invoice the Purchaser for the Goods on or at any time after delivery.

(4) The purchase price is due, and payable net 30 days from the date of the invoice. From the due date interest in the amount of 8 percentage points above the respective base interest rate of the European Central Bank shall accrue. We reserve all rights to claim further damages for delay.

(5) Without any other instruction, payments satisfy the longest outstanding debt claim.

(6) We shall be entitled to fix the credit limit of the Purchaser at any time at such level as in our absolute discretion we shall deem fit.

## 3. Offset, Retainer

The Purchaser shall be entitled to offset only insofar as the Purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgment. The Purchaser is entitled to claim retainer rights only to the extent that such rights are based on the same transaction.

## 4. Delivery

(1) Unless otherwise specified in the order confirmation, the agreed delivery term is "ex works"; the Incoterms, applicable version, shall apply.

(2) Planned or target dates for delivery are estimates only, and time shall not be of the essence in respect of such planned or target delivery dates.

(3) Delivery is conditional upon timely and proper performance of all duties of the Purchaser.

(4) Reasonable delays in the delivery of the Goods shall not entitle the Purchaser to: (a) refuse to take delivery of the Goods; or (b) claim damages; or (c) terminate this Agreement.

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(5) As far as is practicable in the ordinary course of business, the Purchaser shall examine the Goods immediately after the Goods are delivered by us and upon the discovery of any defect, must, within 48 hours, give notice thereof to us.

(6) In case of default in acceptance or other breach of duties to cooperate by the Purchaser, we are entitled to claim any resulting damage including, but not limited to, additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the Goods passes to the Purchaser at the time of such default or breach of duty to cooperate.

(7) If the Purchaser fails to give notice of rejection in accordance with clause 4(5) it shall be deemed to have accepted the Goods.

### **5. Passing of Risk, Shipment**

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If the Purchaser demands shipment of the Goods the risk of loss or damage to the Goods passes to the Purchaser upon dispatch.

### **6. Retention of Title**

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(1) Subject to clauses 4 and 5, risk for the Goods delivered by us to the Purchaser shall pass to the Purchaser on completion of delivery of the Goods. We retain title to the Goods until we have received payment in full for the Goods and all other sums which are due to us from the Purchaser for sales of the Goods. In the event of breach of contract by the Purchaser including, without limitation, default in payment, we are entitled to take possession of the Goods.

(2) Where the purchase price has not been paid in full, the Purchaser shall immediately inform us in writing if the Goods become subject to rights of third persons or other encumbrances.

(3) In instances where the Purchaser processes, converts or transforms the Goods subject to reservation of title, we shall become owners of the new products without incurring any liability or any obligation. In the event that the Purchaser combines, mixes, blends, commingles or processes the Goods subject to reservation of title with other goods owned by third parties or transforms them with other goods owned by third parties, we shall acquire and be entitled to co-ownership of the new goods produced in proportion to the contributing values of the Goods subject to reservation of title and the value of the other goods previously owned by third parties. To that extent, the new goods are considered goods subject to reservation of title for the purposes of these general terms and conditions of sale.

(4) A sale of the Goods subject to reservation of title is only permitted in the ordinary course of business. Any other dispositions, in particular pledging or chattel mortgaging of the Goods subject to reservation of title, are not permitted, and the Purchaser shall not allow any lien or encumbrances. Any claims or receivables arising to the Purchaser in connection with the Goods subject to reservation of title due to resale or other disposal or for other reasons, are hereby fully assigned to us in advance by the Purchaser. In the case of co-ownership, the assignment only applies to the share of the claim or receivable corresponding to our co-ownership. An onward sale or other disposal is only permitted if the assignment to us and our rights are maintained and not adversely affected thereby.

(5) The Purchaser is only authorized to collect the claims and receivables assigned to us in the ordinary course of business and subject to revocation by us at any time. At our request, the Purchaser shall inform his debtors of the assignment in the proper form. In addition, the Purchaser grants us an irrevocable power of attorney so that we are likewise entitled and authorized to do so at any time that payment from the Purchaser is overdue.

(6) We are entitled to take possession of the Goods without prior termination of the agreement where the Purchaser has not complied with the terms of payment, the Purchaser has violated its obligations under sections (2), (3), (4) or (5) above, where insolvency proceedings are instituted against the Purchaser or where a substantial deterioration of the Purchaser's financial situation becomes apparent or known to us. In such cases we shall be entitled to take possession of the Goods subject to retention of title, to enter immediately the Purchaser's premises for this purpose and to obtain all information reasonably required by us on the Goods subject to reservation and, if applicable, on claims or receivables which have arisen or may result from their resale.

(7) Where our claims shall be undoubtedly secured through the assignment by more than 125%, any surplus of receivables and/or Goods delivered under retention of title shall, upon demand of the Purchaser, be released in accordance with our request.

(8) In case and as far as registration and/or fulfillment of other requirements are necessary for the validity of the reservation of title, the Purchaser is obliged to take or to cause all measures necessary forthwith and make all notices and statements necessary. In case, and as far as the authoritative law does not allow a stipulation of reservation of title, the Purchaser will grant other

appropriate collateral in case of strain of credit on the Goods.

## **7. Quality of the Goods, Storage and Processing, Shelf-life, Technical Advice**

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(1) The Goods supplied to the Purchaser by us comply with all applicable statutory and regulatory requirements and shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for purpose as held out by us in our product data sheets or in other written product information. Public statements and advertising shall not be considered as the agreed quality.

(2) Except as set out in this Agreement, all warranties, conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

(3) Our adhesives are designed for industrial use and are sensitive to light and temperature. Our adhesives, therefore, must be stored and applied exactly in accordance with our instructions contained in the respective product data sheet.

(4) The shelf-life of our adhesives is specified in the respective product data sheet and is subject to compliance with our storage conditions.

(5) Our advice regarding use and application of the Goods is provided on the basis of our best knowledge which is derived from our experiences and the information received from the Purchaser. We do not warrant any result from the use of the Goods. In addition, we do not assume any liability where free of charge advice is provided by us to the Purchaser. The application, use and processing of the Goods is not within our control and is, therefore, the exclusive responsibility of the Purchaser.

## **8. Warranty**

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(1) A precondition of any warranty claim of the Purchaser is the Purchaser's full compliance with clause 4.

(2) Warranty claims shall be time-barred after 12 months of the transfer of risk in the Goods.

(3) In the event of discovery of a defect in the Goods, the Purchaser is entitled at its sole discretion, to demand that the defective Goods be replaced or the defect be remedied. In the event of a failure by us to correct the defect or replace rejected Goods, the Purchaser is entitled to reduce the purchase price or to withdraw from the Agreement.

## **9. Liability**

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(1) Nothing in this Agreement shall limit or exclude the liability of either Party for death or personal injury resulting from negligence or fraud or fraudulent misrepresentation or breach of the terms implied by section 12 of the Sale of Goods Act 1979 or **breach** of section 2 of the Consumer Protection Act 1987.

(2) We shall not be liable to the Purchaser, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profit or loss of goodwill or loss of business or loss of business opportunity or loss of anticipated saving or special, indirect or consequential damage suffered by the Purchaser that arises under or in connection with the Agreement.

(3) Any liability not expressly provided for above shall be disclaimed as permitted under the applicable law

## **10. Termination**

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(1) Either party shall be entitled to terminate the Agreement with immediate effect by giving written notice to the other party if: (a) the other party fails to pay any undisputed amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or (b) the other party commits a material breach of its obligations under the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or (c) the other party commits a series of persistent minor breaches which when taken together amount to a material breach; or (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or (h) an application is made to

court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or (i) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11(d) to clause 11(g) (inclusive); or (l) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or (m) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010); or (n) any force majeure event prevents the other party from performing its obligations under the Agreement for any continuous period of three months.

(2) On termination of the Agreement, each party shall promptly return to the other party the Goods that the other party had supplied to it in connection with the Agreement and on request, certify in writing to the other party that it has complied with the requirements of this clause.

#### **11. Force Majeure**

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(1) Should any party be impeded from due fulfillment of contractual obligations (except payment obligations) as a result of force majeure, the delivery time shall be extended by the period of the disruption of the performance caused by such circumstances of force majeure.

(2) Force majeure means all unforeseen events, or such events, even if they are foreseeable, are beyond the reasonable control of the affected party and where the impact on the performance of contractual obligations cannot be avoided by reasonable efforts. This shall include Acts of God, extraordinary storms or floods, strikes, lockouts, fires, riots, civil commotion or civil unrest, incendiarism, interference by civil or military authorities, and act of war (declared or undeclared), breakdown or damage to plants, equipment or facilities, modifications of governmental regulation, labor disputes, force majeure of suppliers, shortage of or inability to obtain proper or in time production material or products.

#### **12. Severance**

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If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force.

#### **13. Applicable Law, Contract Language, Jurisdiction, Applicable German Version**

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(1) The contractual relationships between the parties shall be governed, and construed in accordance with, the laws of Ireland. The parties hereby exclude the 1980 United Nations Convention on Contracts for the International Sale of Goods and all and any additions, amendments or changes thereto.

(2) The Irish courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement and the parties submit to the exclusive jurisdiction of the Irish courts.