

# HILEX POLY CO. LLC STANDARD TERMS & CONDITIONS FOR SALE OF ITS PRODUCTS

**ACCEPTANCE.** The following Standard Terms and Conditions are applicable to all quotations and orders between Hilex Poly Co. LLC ("Hilex") and any buyer ("Buyer") of any products of Hilex ("Products") and are the only terms and conditions, oral or written, applying to the sale of Products to Buyer except for additional terms consistent with these Standard Terms and Conditions on prices, quantities, delivery schedules, and the description and specifications of the Products as set forth in an order form issued by Hilex ("Hilex Order Form"). Hilex hereby objects to and rejects any other terms or conditions appearing on, incorporated by reference in or attached to any purchase order, acceptance, acknowledgement, invoice, transmittal or other document other than a Hilex Order Form. Hilex's failure to object to any provision contained in a document or communication from Buyer shall not be a waiver of these Standard Terms and Conditions or any Hilex Order Form. All proposals, negotiations, representations, quotations or agreements, if any, written or oral, regarding the sale of any Products and made prior to or contemporaneous with the date of these Standard Terms and Conditions are merged herein. Acceptance of these Standard Terms and Conditions and any Hilex Order Form, both or either of which may be delivered to Buyer in electronic form by Hilex shall be deemed to have occurred upon the earlier of (i) executing or accepting these Standard Terms and Conditions, (ii) executing or accepting any Hilex Order Form; (iii) when Buyer is aware that Hilex has commenced performance thereunder or (iv) taking delivery of any Products. Accepted Hilex Order Forms may not be modified, cancelled or rescheduled without Hilex's written consent and are subject to modification, cancellation or reschedule charges determined by Hilex.

**SPECIFICATIONS OF PRODUCTS.** Any specifications for a Product shall be only as set forth in a Hilex Order Form ("Specifications").

**PRICES AND PAYMENT TERMS.** The prices for the Products are as set forth in an applicable Hilex Order Form. Any acceptance or issuance by Hilex of a Hilex Order Form does not provide Buyer with any price protection on Products that would be shipped more than 30 days after the date of the Hilex Order Form. The price of Products are subject to monthly adjustments, including for changes in resin prices (the movement of HDPE as reported by the Chem Data Index).

Unless different payment terms are specified in a Hilex Order Form, payment terms are net 30 days from the date of shipment of Product under a Hilex Order Form. Payments must be made by wire transfer and received in Hilex's account no later than 30 days from the date of shipment of Product. If Hilex does not receive full payment by the due date, a late fee will be applied at a rate of 1.5% of the original balance per month. Buyer will incur all charges, if any, related to the wire transfer of the funds to Hilex's account. Prices exclude any tax or duty now or hereafter imposed upon the production, transportation, export, import, storage, delivery, sale, or use of Products.

Any changes to any Specifications, sophistication of print, order patterns, payment terms, or other matters in a Hilex Order Form may result in Hilex modifying pricing on the applicable Products.

Without waiving any other rights or remedies available to Hilex under applicable law or otherwise, Hilex may, at its option, defer shipment or deliveries of Products until all past-due accounts of Buyer to Hilex have been satisfied in full.

**TAXES.** Buyer shall pay Hilex any and all governmental taxes, charges or duties of every kind (excluding any tax based upon Hilex's income) that Hilex may be required to pay with respect to the production, transportation, export, import, storage, delivery, purchase, sale or use of the Products. Buyer shall provide Hilex, on request, with properly completed exemption certificates for any tax or duty from which Buyer claims an exemption.

**SHIPMENT; RISK OF LOSS AND INSPECTION.** Shipment dates are approximate only. Unless different delivery terms are specified in a Hilex Order Form, title and risk of loss shall pass to Buyer DDU (Incoterms 2000). Buyer may inspect the Products, or provide for inspection, at the point of shipment. Buyer shall inspect the Products for failure to conform to any Specifications immediately upon receipt.

**WARRANTY; DISCLAIMER OF WARRANTY.** HILEX WARRANTS FOR A PERIOD OF SIX MONTHS FROM SHIPMENT OF A PRODUCT TO BUYER ONLY THAT THE PRODUCT WILL CONFORM TO ANY SPECIFICATIONS IN A HILEX ORDER FORM IN ALL MATERIAL RESPECTS. BUYER'S EXCLUSIVE REMEDY FOR HILEX'S BREACH OF ANY WARRANTY SHALL BE FOR HILEX TO, AT HILEX'S ELECTION, PROVIDE TO BUYER REPLACEMENT PRODUCT OR ISSUE BUYER A CREDIT FOR THE PURCHASE PRICE PAID FOR THE PRODUCT. NO CLAIM FOR BREACH OF WARRANTY WILL BE VALID IF MADE AFTER THE PRODUCT HAS BEEN ALTERED OR USED. BUYER SHALL AFFORD HILEX A PROMPT AND REASONABLE OPPORTUNITY TO INSPECT ANY PRODUCT FOR WHICH A BREACH OF WARRANTY CLAIM IS MADE. NO PRODUCT SHALL BE RETURNED WITHOUT HILEX'S EXPRESS CONSENT AND THE ISSUANCE OF A RETURN AUTHORIZATION AND RETURN INSTRUCTIONS PER HILEX'S CUSTOMER RETURN POLICY.

**EXCEPT FOR THE WARRANTIES IN THE IMMEDIATELY PRECEDING PARAGRAPH, HILEX EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.**

**LIMITATIONS OF LIABILITIES.** In no case shall Hilex be liable for any special, incidental or consequential damages based upon breach of contract, negligence, strict liability, tort, or any other legal theory, even if Hilex is notified of the possibility of such damages. In all cases, Hilex's maximum liability arising out of or relating to these Terms and Conditions and any Hilex Order Form, regardless of the legal theory, shall not exceed the contract price of the Products supplied by Hilex to which such liability relates. Hilex shall not be liable for any loss, damage, detention or delay due directly or indirectly to causes beyond its reasonable control, such as acts of God, acts of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, war, riot, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labor, materials, manufacturing facilities or transportation due to such causes. Hilex

**further reserves the right to allocate inventories and current production and to substitute suitable materials when, in its opinion, circumstances warrant such allocation or substitution.**

**AGENCY.** These Terms and Conditions do not constitute an agency relationship between the parties and neither party shall hold itself out to be the legal representative, agent, or employee of the other party for any purpose whatsoever.

**MODIFICATION, WAIVER.** Neither these Terms and Conditions nor any Hilex Order Form, nor any term or provision hereof or thereof may be modified, amended, or waived by Buyer, except by a writing duly executed by Hilex.

**ASSIGNMENT.** These Standard Terms and Conditions and any Hilex Order Form shall be binding upon and inure to the benefit of Hilex and Buyer and each of their respective successors and permitted assigns. Neither party shall assign or delegate its rights or responsibilities under these Standard Terms and Conditions or applicable Hilex Order Form, or any portion thereof, without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that Hilex may assign these Standard Terms and Conditions and any Hilex Order Form in connection with a merger, a sale of all or substantially all of its assets or a reorganization without the consent of Buyer by providing notice to Buyer.

**SEVERABILITY.** If any provision of these Standard Terms and Conditions or any Hilex Order Form shall be held invalid or unenforceable, such provision shall be deemed deleted from these Standard Terms and Conditions or any Hilex Order Form and replaced by a valid and enforceable provision which, so far as possible, achieves the same economic and other benefits for the parties as the severed provision was intended to achieve, and the remaining provisions of these Standard Terms and Conditions and any applicable Hilex Order Form shall continue in full force and effect.

**NOTICE.** Any notices and other communications provided for hereunder shall be in writing (including telegraphic, telex, or cable communication) and shall become effective (i) when manually delivered on a business day during normal business hours at the place of receipt to the party to be given such notice, (ii) on the seventh business day following the day when deposited, if mailed by certified or registered mail with return receipt requested and postage thereon fully prepaid, (iii) on the second business day following the day when deposited, if sent by overnight courier, fully prepaid, or (iv) the business day such notice shall have been sent by telex, telegram, telecopier, cable, or similar electronic device, fully prepaid.

**ENTIRE AGREEMENT.** These Standard Terms and Conditions together with any Hilex Order Forms represent the entire integrated contract of the parties with respect to the terms of purchase and sale of the Products, and supersedes all previous agreements and understandings between the parties with respect to the subject matter of these Terms and Conditions, and may not be modified except by an instrument in writing signed by the duly authorized representatives of the parties.

**GOVERNING LAW AND FORUM.** These Terms and Conditions and all Hilex Order Forms shall be governed by, construed and interpreted in accordance with the laws of the State of South Carolina, without reference to the conflicts of laws principles thereof. Any claim, action, suit or other proceeding initiated under or in connection with these Terms and Conditions or any Hilex Order Form may be asserted, brought, prosecuted and maintained only in any federal or state court in the State of South Carolina having jurisdiction over the subject matter thereof, and the parties hereto hereby waive any and all right to object to the laying of venue in any such court and to any right to claim that any such court may be an inconvenient forum. The parties hereto submit themselves to the jurisdiction of each such court and agree that service of process on them in any such action, suit or proceeding may be affected by the means by which notices are to be given to it under these Terms and Conditions.

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