



MCPU Standard Contract 101

Agreement Between Seller and Buyer – For Sale on Credit

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion, modification, or extension.

This **AGREEMENT** is made as of the _____ day of _____ in the year of _____, by and between the following parties, for the sale of materials.

BUYER:

(Name and address)

SELLER:

MCPU Polymer Engineering LLC (MCPU)
708 S. Temescal St., Suite 101
Corona, CA 92879

MATERIALS:

(Type in First Order including both materials and price)



Article 1

Contract Documents

- 1.1 The Contract Documents are comprised of the following:
- 1.2 This Agreement, including all exhibits and attachments executed by Buyer and Seller.
- 1.3 Purchase orders for future orders per article 2.21
- 1.4 Shipping Authorizations for future sales of materials by Seller to Buyer.
- 1.5 The following other documents, if any:

Article 2

Terms and Conditions

2.1 NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, MCPU will sell product(s) to Buyer subject to these Terms and Conditions:

2.2 ACCEPTANCE OF TERMS AND CONDITIONS: All transactions between Buyer and MCPU are governed by these Terms and Conditions, notwithstanding any proposals submitted by Buyer. Acceptance of this order from MCPU is expressly conditioned on Buyer's assent to MCPU's Terms and Conditions. MCPU specifically rejects any different or additional terms and conditions and neither MCPU's performance nor receipt of payment shall constitute acceptance of them.

2.3 TESTING IN ADVANCE OF PURCHASE OF MCPU PRODUCT: It is imperative that in advance of an order, Buyer test MCPU's products, and analyze the technical assistance and information contained in MCPU's Technical Data Sheet ("TDS") to determine whether the products are suitable for Buyer's intended uses and applications. MCPU will supply samples to Buyer upon request in advance of shipment of an order to allow for such testing. This application-specific analysis must at least include testing to determine suitability from a technical, as well as health, safety, and environmental standpoint. The TDS for these products provides information regarding typical



properties, health & safety, storage & handling information. The information contained in the TDS is offered for Buyer's consideration, investigation, and verification. It is presented in good faith and is believed to be reliable. MCPU, however, makes no representation as to either its accuracy or completeness. In addition, MCPU makes no warranty, express or implied, with respect to the data contained therein.

2.4 MATERIAL SAFETY DATA SHEET: Material Safety Data Sheets include information known to MCPU and related to products manufactured by MCPU. Material Safety Data Sheets for requested products will be supplied upon request of Buyer.

2.5 ORDERING: Any order placed by Buyer is subject to acceptance by MCPU and may be refused for any reason, including credit concerns, restricted product, unusual volumes, or shipping addresses. Once accepted, MCPU may make partial shipments if some items are on backorder.

2.6 CANCELLATION: At any time prior to shipment, MCPU may alter or suspend credit, refuse shipment, or cancel unfilled orders whenever, in MCPU's opinion, the financial condition of the Buyer, or the status of Buyer's account, warrants it, or if the Buyer delays or cancels delivery. Buyer may delay or cancel this order at any time upon payment in full of all expenses incurred by MCPU.

2.7 SALES OR USE TAX: Buyer shall pay any applicable national, state or local sales or use taxes upon, or measured by, the production, sale, transportation, delivery or use of the goods sold.

2.8 DELIVERY AND INSPECTION: Delivery will be FOB Kansas. Buyer agrees to pay storage fees to MCPU if MCPU is required to store products after they are ready for delivery. At time of delivery, Buyer assumes all risk of damage and loss resulting from any cause whatsoever. Buyer agrees to inspect and evaluate all products sold by MCPU upon delivery and receipt by Buyer or Buyer's agent. Buyer is solely responsible for, and must determine suitability of products delivered under this Agreement. MCPU must be notified in writing within ten (10) days after Buyer's receipt of any shipment of MCPU's products if such goods are claimed to have been damaged during shipment or short delivered in any respect. Failure to notify MCPU shall constitute a waiver of all claims for damaged and short delivered goods for an order placed by Buyer with MCPU.



2.9 BUYER'S USE CONSTITUTES ACCEPTANCE . Since Buyer has determined through sample testing the suitability of the MCPU product for the actual intended use and application in advance of receipt of the product, **BUYER'S USE OF MCPU'S PRODUCT CONSTITUTES ACCEPTANCE OF THE PRODUCT.**

2.10 LIMITED WARRANTY, EXCLUSIVE REMEDY AND DISCLAIMER OF ADDITIONAL WARRANTIES: MCPU warrants that, at the time of shipment by MCPU, the product(s) conform to MCPU's written specifications as communicated in the Shipping Authorization applicable to each order. Buyer must examine the product when received and promptly notify MCPU in writing of any non-conformity with the written specifications before the product is used, and, in any event, no later than 10 days after such non-conformity is first discovered. If MCPU, in its sole discretion, determines that the product breached the above warranty, it will, in its sole discretion, replace the non-conforming product, refund the purchase price or issue a credit in the amount of the purchase price. This is the sole and exclusive remedy for breach of this warranty. In addition, MCPU shall only be liable under this warranty if the material has been paid for in full AND applied, used, and stored in accordance with MCPU's written instructions and warnings.

The MCPU warranty covers the specifications listed in the Shipping Authorization, and not the information in the TDS. The manner in which Buyer uses and the purpose to which Buyer utilizes the MCPU product, and technical assistance and information (whether verbal, written or by way of product evaluations) including any suggested recommendations by MCPU personnel, are not covered under this Limited Warranty. All information and technical assistance is subject to change without notice. Nothing herein shall be construed as a recommendation or use concerning any product in conflict with patents covering any material or its use. No license is implied or in fact granted under the claims of any patent.

Only an MCPU officer is authorized to modify this warranty. The sales information on the MCPU website and any information, oral or written, received by Buyer during the sales process, or at any other time, does not supersede this warranty and the specifications of the product in force on the date of sale contained in the Shipping Authorization. **THE FOREGOING WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING**



WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES OTHERWISE ARISING BY OPERATION OF LAW, COURSE OF DEALING, CUSTOM, TRADE OR OTHERWISE.

2.11 LIMITATION OF LIABILITY AND DAMAGES: MCPU's liability for products Buyer claims do not conform to the Product's Specifications shall in no event exceed the purchase price for the products against which such claim is made. MCPU shall not be liable for any defects that may be caused either by faulty materials manufactured by others and used in the aggregate with MCPU's produced materials, or by faulty selection, application, construction, installation or use by Buyer or others. Under no circumstances shall MCPU be responsible for Buyer's removal or installation costs. MCPU and Buyer agree that MCPU shall not be liable for any liquidated damages, penalties, or consequential, contingent, indirect, special or incidental damages whatsoever, resulting from the purchase, delivery, receipt, installation or use of MCPU's products, even if MCPU shall have been advised of the possibility of such potential loss or damage, including, without limitation, liability for loss of use, loss of work in progress, down time, loss of revenue or profits, Buyer's cost of cover, failure to realize anticipated savings, loss of Buyer's property or any liability damage or loss occasioned by such product, except for injuries to persons, under any tort, negligence, strict liability, contract, or other legal or equitable theory, including indemnity. Under no circumstances shall Buyer be entitled to a claim for damages of any kind for loss, damage or leakage after delivery is made in good condition. Under no circumstances shall MCPU be liable for any delays in the performance of this Agreement or any order submitted by Buyer or Buyer's agent, in whole or in part, from any cause, including but not limited to fire, earthquake, flood, rainstorm, strike lockouts, or other differences with workmen or employees, accidents, war, riots, embargoes, delays, losses, or damages in transportation, shortages of train cars or transportation carriers, fuel, labor or materials, delays of other companies or contractors, or similar contingencies. MCPU reserves the right to refuse to make delivery in any instance where MCPU believes delivery unsafe or impracticable by reason of any strike, lockout boycott or picketing or other labor disputes whether existing or threatened. No payment to MCPU shall be withheld by Buyer pending adjustment of liability for the amount of any claim.



2.12 RETURN OF GOODS: When responsibility for the return is the Buyer's, e.g. ordered in error, excess stock, discontinuance of product use, change in product specifications, etc. and unrelated to MCPU's performance, and the return is authorized by MCPU, credit will be issued after receipt and approval of the quality of the goods, less a restocking charge at MCPU's discretion. Should Buyer be in default in payment of any accounts with MCPU, MCPU is entitled, at its option, to apply Buyer's credit or refund to reduce the balance of those accounts. For products returned requiring reconditioning expense, such expenses will be charged to the Buyer's account.

Where responsibility for the return is determined to be with MCPU, e.g. timely notice to MCPU that product did not meet specifications, wrong goods shipped, etc.; credit will be issued upon receipt, inspection and approval for credit by MCPU. Returned goods shall be protected from damage while in Buyer's possession. Except for will call sales, transportation in both directions is at MCPU's expense. Under all circumstances, return may be made only with MCPU's approval and all returns must be made immediately after MCPU's authorization.

2.13 INDEMNITY: To the fullest extent permitted by law, Buyer agrees to defend, indemnify and hold MCPU harmless from and against any claim or liability, including all losses, damages and/or expenses, claims, suits, judgments, including costs and fees of legal counsel and all other costs of defending any action, attributable to bodily injury, sickness, disease, or damage to or destruction of property (including loss of use thereof) caused by, arising out of, or in any way connected with the delivery, installation, or use of the product purchased from MCPU, including the possession, use or resale of the products, or where MCPU may incur as a result of any act or failure to act by the Buyer, its officers, agents or employees, successors or assignees, its customers or all other third parties, whether direct or indirect, whether or not caused in part by the active or passive negligence or other fault of MCPU; provided, however that Buyer's duty hereunder shall not arise if the cause is due to MCPU's sole negligence.

2.14 FORCE MAJEURE: All orders taken are subject to force majeure and are contingent upon strikes, accidents, Acts of God, weather conditions, inability to secure labor, fire regulations or other restrictions imposed by any government or governmental agency, or other delays beyond MCPU's control. In the event such acts occur, MCPU shall be released of all obligations but may reaffirm any contracts if such restrictions are removed within thirty (30) days.



2.15 DISPUTE RESOLUTION THROUGH ARBITRATION: Any claim, controversy, or dispute between MCPU and Buyer, including but not limited to their agents, employees, officers and directors, shall be addressed by binding arbitration. A single arbitrator engaged in the practice of law shall conduct the arbitration under the then current rules of the American Arbitration Association. Kansas law shall govern the arbitrability of all claims. The arbitrator shall have the authority to award compensatory damages only, as limited by this contract, including the LIMITATION OF LIABILITY AND DAMAGES section incorporated herein. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and attorneys' fees. Nothing in this provision precludes MCPU and Buyer from agreeing to resolve the dispute or otherwise agreeing to attend a non-binding mediation for purposes of exploring resolution of a dispute in advance of the issuance or entry of a binding arbitration award.

2.16 FORUM AND APPLICABLE LAW: The place of agreement regarding MCPU's Credit Application and Sale of MCPU Products, its status or forum, is at all times in the State of Kansas, where all matters, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this agreement shall be determined. This Agreement, and any and all subsequent modifications, shall be construed and enforced according to the laws of the State of Kansas.

2.17 LIMITATION OF ACTIONS: No action against Seller arising out of any transaction may be commenced by Buyer more than one (1) year after the cause of action has accrued.

2.18 SEVERABILITY: Should any part, term, or provision of this Agreement be determined to be void, voidable or invalid, in any jurisdiction, the validity of the remaining portions of provisions shall not be affected thereby.

2.19 ASSIGNMENT: No transaction by Buyer, or any part therein, nor any claim arising hereunder shall be transferred or assigned by Buyer without the prior written consent of MCPU.

2.20 TRANSFER: In the event of a transfer of any product to a third party, purchaser shall, at its option, either (1) obtain for MCPU written assurance from the transferee that MCPU's protection against liability following the transfer is the equal of that provided by



this contract., or, (2) indemnify MPCU against any liability that it may incur in excess of that which it would have incurred had purchaser obtained the above assurance from the transferee.

2.21 OTHER AGREEMENTS OR MODIFICATIONS: The terms and conditions herein shall govern the purchase of products identified herein. It is furthermore the intention of MCPU and Buyer that the terms and conditions identified herein, except as to price, item, quantity and delivery information, shall govern all future orders, requests, offers, agreements or contracts between the parties. Any terms or conditions on Buyer’s purchase order or other documents are hereby expressly rejected by seller. The terms and conditions herein cannot be modified without written authorization by an officer of MCPU.

2.22 TYPOGRAPHICAL ERRORS: Seller shall not be responsible or liable to Buyer for typographic errors. In the event a product is listed at an incorrect price or with incorrect information due to typographical error or a clerical error in pricing, Seller shall have the right to refuse or cancel any orders placed for product listed at the incorrect price.

2.23 TECHNICAL SERVICES: Field visits by MCPU personnel are not for supervision or quality control. They are for customer relations only and do not modify any of the terms and conditions for sale as contained in this Agreement. MCPU cannot be responsible for job conditions, schedule, workmanship, or quality of the project as a whole. It is the sole responsibility of the applicator to ensure that the project goes as planned.

2.24 FINANCIAL TERMS. Standard MCP payment terms are Net 30 days. Extended terms may be offered at MCPU’s sole discretion upon completion of a Project Information Sheet allowing MCPU to secure bond rights, mechanics lien rights, or other payment rights.

Article 3

Application for Credit

APPLICANT NAME _____

PHYSICAL LOCATION _____ CITY _____ ZIP _____
If different than Mailing Address

MAILING ADDRESS _____ CITY _____ ZIP _____

TELEPHONE NUMBER (_____) _____ FAX NUMBER (_____) _____
Area Code Area Code



CONTRACTOR'S LICENSE NUMBER _____ TYPE OF LICENSE _____
 ~ CORPORATION ~ PARTNERSHIP ~ LLC ~ SOLE OWNERSHIP

OWNERS, OFFICERS OR PRINCIPALS

NAME	TITLE	SOC. SEC/TAX I.D. #
HOME ADDRESS		HOME PHONE #
CITY	STATE	ZIP
NAME	TITLE	SOC. SEC/TAX I.D. #
HOME ADDRESS		HOME PHONE #
CITY	STATE	ZIP
NAME	TITLE	SOC. SEC/TAX I.D. #
HOME ADDRESS		HOME PHONE #
CITY	STATE	ZIP

NAME FOUR FIRMS WITH WHOM YOU HAVE ESTABLISHED CREDIT

NAME	NAME
ADDRESS	ADDRESS
CITY	CITY
PHONE NUMBER ()	PHONE NUMBER ()
NAME	NAME
ADDRESS	ADDRESS
CITY	CITY
PHONE NUMBER ()	PHONE NUMBER ()

BANK REFERENCES

BANK	TYPES OF ACCOUNT(S): ~ CHECKING ~ SAVINGS ~ LOAN
BRANCH	ACCOUNT NUMBER
ADDRESS	CITY
PHONE NUMBER ()	MANAGER OR RESPONSIBLE PARTY

HOW LONG IN BUSINESS? _____ TYPE OF BUSINESS _____
 BONDING COMPANY _____
 ADDRESS: _____
 CITY/STATE: _____ STATE: _____

HAVE YOU EVER FILED BANKRUPTCY? ~ YES ~ NO
IF YES, WHEN AND WHERE: _____
STATUS OF BANKRUPTCY: _____

* IF APPLICANT IS A LICENSED CONTRACTOR, THE COMPANY NAME MUST BE THE SAME AS IT APPEARS ON THE CONTRACTOR'S LICENSE.
 IF MATERIAL FOR RESALE, PLEASE PROVIDE A CURRENT RESALE CERTIFICATE OR BE SUBJECT TO TAXATION.



Note: Both Buyer and Guarantor(s) give their unconditional consent to have their non-business, personal consumer credit report and history search obtained and used by Seller in connection with this application for credit.

Buyer (Applicant): _____

Signature of Authorized Agent of Applicant: _____ Date _____
Must be owner, officer, or partner

Print name of person signing: _____ Title _____

Guarantor signature: _____ Date _____
Individual signature - No Title

Print name of person signing guaranty: _____

Guarantor signature: _____ Date _____
Individual signature - No Title

Print name of person signing guaranty: _____

READ THIS AGREEMENT BEFORE SIGNING BELOW. THIS WILL AFFECT YOUR RIGHTS. Signature constitutes acceptance of all MCPU Terms and Conditions herein. Issuance of credit and/or sale of MCPU product will not take place without written acceptance.

BUYER:

SELLER:

 Name of Buyer

MCPU Polymer Engineering, LLC
 Name of Seller

 Signature

 Signature

 Printed Name

 Printed Name

 Title

 Title

 Date

 Date