

Terms and Conditions of Sale

1. Interpretation

- 1.1 In the terms and conditions contained herein (“**Conditions of Sale**”) –
- 1.1.1 **MAPEI** means MAPEI Malaysia Sdn Bhd (Company No. 231780-K);
- 1.1.2 **Customer** means the person or corporation who buys or agrees to buy goods from MAPEI;
- 1.1.3 **goods** means any product of whatever nature which is sold or to be sold by MAPEI;
- 1.1.4 **contract** means the contract of sale entered into between MAPEI and Customer for or in relation to the sale and purchase of goods;
- 1.1.5 **Terms and Conditions of Credit** means the Terms and Conditions of Credit Facility applicable to a credit facility granted by MAPEI to the Customer;
- 1.1.6 **security party** means any person or corporation who gives security, including guarantee, in favour of MAPEI for the credit facility granted by MAPEI to the Customer; and
- 1.1.7 **guarantee** means letter of guarantee executed by a person or corporation other than the Customer in favour of MAPEI as security for the credit facility granted by MAPEI to the Customer.

2. General

- 2.1 The Conditions of Sale shall apply to all contract of sale of goods except otherwise varied by MAPEI in writing of any specific provision in the Conditions of Sale.
- 2.2 Any purchasing conditions inconsistent with the Conditions of Sale shall be deemed to have been rejected by MAPEI unless otherwise expressly agreed by MAPEI in writing.
- 2.3 MAPEI shall not be deemed to have accepted any purchasing conditions inconsistent with the Conditions of Sale by acknowledging receipt of any document from the Customer, including purchase order.
- 2.4 MAPEI reserves the right to vary any provision in the Conditions of Sale as MAPEI deems necessary on reasonable notice in writing to Customer.

3. Formation of Contract

- 3.1 All quotation and information supplied by MAPEI to Customer shall not constitute a binding offer from MAPEI but is merely an illustration or invitation to Customer to offer to buy goods from MAPEI.
- 3.2 A contract shall only be formed and come into existence when MAPEI accepts the order or offer from the Customer to buy goods from MAPEI. No order or offer to buy goods submitted by Customer shall be deemed to be accepted by MAPEI unless MAPEI confirms its acceptance in writing or acts on such order or offer by delivering the goods to the Customer.
- 3.3 In the event where no written order to purchase goods is issued by Customer to MAPEI, the acceptance of the goods by the Customer shall constitute a binding contract between MAPEI and the Customer.

4. Price & Payment

- 4.1 MAPEI may revise the price quoted at anytime prior to the collection or delivery of goods due to factors which are beyond the control of MAPEI, including but not limited to the fluctuation of foreign currency exchange rate and the increase in government tax or duty.
- 4.2 In the event that MAPEI desires to revise the price quoted, MAPEI shall give reasonable notice to the Customer.
- 4.3 In the event a credit facility is granted by MAPEI, the Customer shall pay the price of the goods in accordance with the Terms and Conditions of Credit.
- 4.4 The Customer is not entitled to withhold payment of any sum due and payable to MAPEI by reason of set-off or counterclaim which the Customer may have against MAPEI for any reason whatsoever.
- 4.5 Payment received from Customer will be applied towards the settlement of the earliest invoice due and payable to MAPEI (including the earliest debit notes for late payment interest and other charges as applicable).

5. Interest

- 5.1 MAPEI shall have the right to charge late payment interest at the rate of 1.5% per month on overdue invoice from the day the payment becomes due until full and final settlement of the overdue invoice.

6. Invoices & Statement of Account

- 6.1 Unless otherwise proved by the Customer within fourteen (14) days from the receipt, all the invoices and statements of account issued by MAPEI to the Customer shall be –
- 6.1.1 final and conclusive evidence of the amount owed by the Customer to MAPEI; and
- 6.1.2 binding on the Customer in any legal proceedings brought by MAPEI against the Customer and/or security party.
- 6.2 A statement signed by MAPEI’s authorised officer as the amount due and payable by the Customer to MAPEI shall be final and conclusive evidence against the Customer and/or security party for all purposes including legal proceedings.

7. Delivery & Acceptance of Goods

- 7.1 Any time or date specified by MAPEI on the collection or delivery of goods is only an estimate and does not constitute a condition to the contract unless expressly stated otherwise by MAPEI.
- 7.2 The goods shall be deemed to have been delivered to the Customer –
- 7.2.1 in the case where the Customer requests to self collect the goods, when the Customer collects the goods from MAPEI at the collection point appointed or to be appointed by MAPEI; or
- 7.2.2 in the case where the Customer requests for delivery of goods to a specified location and such request is agreed by MAPEI, when MAPEI delivers the goods to that specified location.
- 7.3 The goods shall be deemed to have been accepted by the Customer if –
- 7.3.1 the Customer collects the goods at the collection point and the delivery order is endorsed and/or acknowledged by any person who holds himself out to collect for the Customer; or
- 7.3.2 MAPEI delivers the goods to a specified location so requested by the Customer and the delivery order is endorsed and/or acknowledged by any person present at that specified location.
- 7.4 In so far as Condition 7.3 applies, MAPEI is not obligated to ensure that –
- 7.4.1 the Customer or its authorised person collects the goods;
- 7.4.2 the goods are delivered to the Customer or its authorised person, and
- MAPEI shall not be held liable for any unauthorised collection or taking delivery of goods.
- 7.5 The Customer shall notify MAPEI in writing within seven (7) days from the receipt of the goods of any shortfall, damage or defects to the goods which is attributed to the fault of MAPEI. If MAPEI does not receive such notification within the stipulated time –
- 7.5.1 the Customer shall be deemed to have agreed and accepted the goods in good order;
- 7.5.2 the delivery order shall be final and conclusive evidence of the type and quantity of goods so collected by or delivered to the Customer; and
- 7.5.3 the Customer shall not return the goods to MAPEI.

- 7.6 MAPEI may make partial delivery of goods or delivery by instalment in any quantity to be determined by MAPEI and each partial delivery or delivery in instalment shall be deemed to be a separate contract to which the Conditions of Sale shall be applicable.

- 7.7 Any cancellation of order or changes made to the time, date or location of the collection or delivery of goods by the Customer is strictly subject to the approval of MAPEI. In the event of cancellation or changes made by Customer, MAPEI may charge reasonable cost of storage of the goods and/or dispose of the goods in any manner MAPEI deems fit and/or claim against the Customer for any loss suffered by MAPEI, including any costs and expenses incurred by MAPEI towards getting ready the goods.

- 7.8 MAPEI shall not be liable for any loss caused to the Customer, whether directly or indirectly, due to any delay in the delivery of goods.

8. Passing of Risk & Property

- 8.1 All risk in the goods shall pass to the Customer immediately upon the Customer collecting the goods or the delivery of the goods to the Customer.

8.2 The property in the goods shall not pass to the Customer until full payment has been made by the Customer on the goods supplied by MAPEI to the Customer.

9. Warranty

9.1 MAPEI warrants that the goods are free from manufacturing defects and meet the properties as specified in the relevant product data sheet prevailing at the time of delivery of goods.

9.2 MAPEI shall issue Product Warranty only on selected goods and such Product Warranty, if issued by MAPEI to the Customer, shall only become effective upon full payment for the goods.

10. Limited Liability

10.1 In the event that the goods supplied by MAPEI is proved by the Customer to be defective, the extent of MAPEI's liability in respect of the goods so proved by the Customer to be defective shall be limited only to the price of the goods sold by MAPEI to the Customer. In the case of the goods so proved by the Customer to be defective, MAPEI shall, at the option of MAPEI, either –

10.1.1 replace the goods; or

10.1.2 refund the price of the goods paid by the Customer.

10.2 In no circumstances shall MAPEI be liable for any form of losses suffered by the Customer, whether directly or indirectly, and/or any liability attached to the Customer, whether from legal proceedings taken by a third party or otherwise, arising from the goods so proved by the Customer to be defective.

11. Indemnity

11.1 The Customer shall indemnify and keep MAPEI indemnified in full all losses, damages, costs, claims, demands, expenses and/or liabilities of any nature, including infringement by the Customer of any patent, registered design and trademark, which may be made against or suffered by MAPEI arising from the goods supplied by MAPEI to the Customer.

11.2 The Customer shall indemnify and keep MAPEI indemnified in full all costs, expenses and/or disbursements incurred by MAPEI in recovering any outstanding debt owed by the Customer to MAPEI, including solicitors' charges on full indemnity basis.

12. Force Majeure

12.1 MAPEI shall not be liable for any failure or delay to perform its part of the contract, including delivery of the goods, if such failure or delay is due to any event of force majeure, which includes but not limited to any acts of god, war, fires, breakdowns, mechanical failures, shortage of raw materials, interruption to transport and any other events beyond the reasonable control of MAPEI.

12.2 In the event of force majeure, MAPEI shall be exempted from the performance of the contract to such extent as affected by such an event and if such an event affects MAPEI's ability to perform the material obligations under the contract, MAPEI may terminate the contract by notice in writing without any liability on its part arising from such termination.

13. Personal Data Protection

13.1 The Customer hereby agrees and consents that to the extent the Customer discloses any personal data of its employees or representatives to MAPEI, MAPEI shall be entitled to collect, process/use and/or disclose such personal data in accordance with the Personal Data Protection Act 2010. MAPEI's Privacy Notice is published at www.mapei.my/legal.

14. Notices

14.1 Any notice (including any demand, invoice, statement of account or other document) shall be in writing and be deemed to have been sufficiently served or given to the Customer by sending such notice by ordinary post, prepaid registered post or facsimile to the address given by the Customer to MAPEI or such other address last known to MAPEI, or by email to an email address of the Customer. Any notice so sent by MAPEI shall be deemed to have been received by the Customer –

14.1.1 in the case of ordinary post and prepaid registered post, after the expiration of three (3) days from the date of posting;

14.1.2 in the case of sending by facsimile and/or email, immediately after the transmission or sending of the same.

15. No Waiver

15.1 Any failure or delay by MAPEI in exercising any right under the Conditions of Sale shall not operate as a waiver nor shall such failure preclude MAPEI from exercising that right or any other right.

16. Applicable Law

16.1 Any contract between MAPEI and the Customer shall be governed and construed in accordance with the laws of Malaysia.

17. Severability

17.1 Any provision in the Conditions of Sale prohibited by or rendered unlawful or unenforceable under any applicable law shall be treated as severed from the contract and the rest of the Conditions of Sale shall remain valid and binding on MAPEI and the Customer.