

TOSOH USA, INC.
STANDARD TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE APPLY TO ALL PRODUCTS OTHER THAN SILICA GLASS MATERIALS.
FOR TERMS AND CONDITIONS OF SALE FOR SILICA GLASS MATERIALS, PLEASE SEE PAGE 2.

IF TOSOH USA, INC. HAS SIGNED A SUPPLY/PURCHASE AGREEMENT WITH THE BUYER, THE TERMS AND PROVISIONS OF THAT SIGNED SUPPLY/PURCHASE AGREEMENT SHALL SUPERSEDE THE TERMS AND CONDITIONS STATED BELOW.

- 1. Acceptance.** BY ORDERING, PAYING FOR OR ACCEPTING ANY PRODUCT SOLD BY TOSOH USA, INC., BUYER AGREES TO ALL THE TERMS AND CONDITIONS STATED BELOW. Acknowledgement or receipt by any employee or agent of TOSOH USA of BUYER's purchase order or other document containing additional or different provisions or conflicting oral representations by an employee or agent of TOSOH USA shall not vary these Terms and Conditions and any such additional or different provisions or representations are rejected. These Terms and Conditions may be changed only by a writing signed by an authorized representative of TOSOH USA stating that it is modifying these Terms and Conditions.
- 2. Title, Risk of Loss, Terms.** Unless otherwise agreed, TOSOH USA shall arrange for shipment of Products by common carrier to BUYER's facilities. Title and risk of loss on the Products shall pass to BUYER upon TOSOH USA's tender of delivery of Products at the F.O.B. TOSOH USA's designated shipping point. TOSOH USA shall invoice BUYER on or after the date of each shipment hereunder. Terms of payment shall be net thirty (30) days. Any delinquent payment shall bear interest at the rate of one and one-half percent (1.5%) per month, up to the maximum rate of interest permitted by applicable law. Delivery of the Products shall be subject to receipt of cash or credit arrangements made by BUYER for the purchase price. If payment is not made in accordance with the terms hereof, or if BUYER's credit standing has been impaired at any time, TOSOH USA may withhold delivery of any Products until satisfactory cash or credit arrangements have been made, and may demand in writing that BUYER provides adequate assurances of its ability to make payments under such terms. BUYER shall pay all costs (including reasonable attorneys' fees) incurred by TOSOH USA to collect amounts due under this Agreement.
- 3. Force Majeure.** TOSOH USA shall have no liability in the event of the occurrence of contingencies beyond the reasonable control of TOSOH USA, including without limitation, war, terrorism, fire, explosion, flood, strike, labor disputes, accident, breakdown, emergency repair or maintenance, riot, act of governmental authority, acts of God, or any other event, whether occurring (a) to TOSOH USA or (b) to TOSOH USA's supplier(s) of Products, interfering with the production, supply or transportation of the Products, or with the supply or transportation of any raw material used to manufacture the Products. In such event, the obligations of TOSOH USA to perform hereunder shall be suspended, and quantities so affected may be eliminated by TOSOH USA from the agreement to sell to BUYER without liability to TOSOH USA.
- 4. Allocation.** If, for reasons of Force Majeure or otherwise, TOSOH USA is unable to supply contracted quantities of Products to all its customers, TOSOH USA may satisfy its obligations under the agreement to sell to BUYER by allocating to BUYER in any commercially reasonable manner a share of TOSOH USA's available supply of Products.
- 5. Warranty/Remedies.** TOSOH USA hereby warrants to BUYER that at the time of shipment to BUYER, the Products will meet the specifications set forth in the then in effect manufacturer's Certificate of Analysis ("COA") or specification and inspection sheets ("Spec Sheets"), as applicable, for the Products. In the event of a breach of warranty by TOSOH USA, BUYER's remedy shall be replacement of the non-conforming Product with conforming Product of like quantities, and return of non-conforming Product to TOSOH USA for credit, provided (a) the non-conforming Product must be returned to TOSOH USA in the condition in which it was received at BUYER's designated location except for any sample taken by BUYER to perform testing (if any), and (b) BUYER shall have notified TOSOH USA of the non-conformance within fourteen (14) days after arrival of the Product at BUYER's designated location. All returns shall be in accordance with the terms of Paragraph 7. OTHER THAN THE WARRANTIES AND REMEDIES AS SET FORTH ABOVE AND IN PARAGRAPH 6, TOSOH USA HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, ARISING FROM ANY COURSE OF DEALING OR TRADE USAGE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.
- 6. Patents.** Subject to the provisions of Paragraph 5, for a period of two (2) years from the invoice date of a Product, TOSOH USA shall defend and indemnify BUYER against any suit, claim or proceeding brought against BUYER that is based on a claim that such Product in its original state constitutes an infringement of any United States patent owned by any third party issued as of the invoice date of the Product and covering the Product itself, if BUYER notifies TOSOH USA promptly in writing and gives TOSOH USA complete control of and authority for the defense and settlement of the same. If any such claim is made, TOSOH USA may, at its option in its sole discretion, (i) at TOSOH USA's expense modify or replace the affected Product to eliminate the alleged infringement, (ii) at TOSOH USA's expense procure for BUYER the right to use the asserted patent rights, (iii) refund the purchase price of the allegedly infringing Product, and/or (iv) cease any further sale of the allegedly infringing Product. Notwithstanding the foregoing, TOSOH USA shall have no liability or responsibility for any claim resulting from (a) any item or product produced from a Product, (b) any combination of a Product with any other item or product, (c) any use or application of a Product, (d) any modification of a Product, or (e) any Product made in accordance with BUYER's specifications or instructions.
- 7. Limitation of Remedies.** BUYER's exclusive remedy against TOSOH USA, and TOSOH USA's total liability, for any claim, whether in contract, tort or otherwise, arising out of this transaction, or alleged to have resulted from an act or omission of TOSOH USA, whether negligent or otherwise, including without limitation any failure to deliver, delay in delivery, product contamination, product liability or breach of warranty, shall be the purchase price for the Products with respect to which such claim is made or, where appropriate and at the option of TOSOH USA in its sole discretion, to replacement of such Product. Any return must be pursuant to a Return Material Authorization issued by TOSOH USA. Transportation charges for returns shall not be paid unless authorized in advance by TOSOH USA. IN NO EVENT SHALL TOSOH USA BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFIT OR LOSS OF USE AS A RESULT OF ANY CLAIM BY BUYER OR ANY ACT OR OMISSION OF TOSOH USA.
- 8. Claims.** TOSOH USA may recover from BUYER for each shipment hereunder as a separate transaction, without reference to any other shipments. BUYER shall be responsible for inspection of the Products upon arrival at BUYER's designated location to insure conformity with the COA or Spec Sheets, as applicable. All claims relating to quantity, quality, weight, and condition of the Product included in a shipment will be deemed waived by BUYER unless written notice thereof shall be given to TOSOH USA within fourteen (14) days after arrival at BUYER's designated location.
- 9. Commitments.** BUYER acknowledges that it is responsible for the safe selection, unloading, handling, storage, use and disposal of Products. BUYER further acknowledges that TOSOH USA is only supplying raw materials. BUYER warrants that it will (i) familiarize itself with Product information supplied by TOSOH USA at any time, including any MSDS, (ii) follow safe handling, use, selling, storage, transportation and disposal practices and ensure that all employees, contractors, agents and customers of BUYER follow these practices, including such special practices as BUYER's use of the Products may require, (iii) take appropriate actions to avoid spills or other dangers to persons, property or the environment, (iv) indemnify TOSOH USA against any claim, loss, liability and expense (including reasonable attorneys' fees) on account of any damage to property or injury or death of persons (including BUYER's employees and including any product liability) arising out of BUYER's unloading, handling, storage, use, sale or disposal of the Products or the failure of BUYER to comply with any of its obligations set forth in this Paragraph, and (v) comply with all applicable laws, rules and regulations, whether of the United States, any state thereof or any foreign country concerning the transportation, storage, use, sale, export and disposal of the Products, including any export control laws. BUYER also warrants that it has used its own independent skill and expertise in connection with the selection and use of the Products, it possesses skill and expertise in the handling, storage, transportation, treatment, use and disposal of the Products, and it agrees that technical information provided by TOSOH USA in regards to Products (whether verbal, written or by product evaluation) are without warranty or representation.
- 10. Taxes/Customs.** BUYER shall reimburse TOSOH USA for all taxes, customs, duties, excises, or other charges hereafter imposed which TOSOH USA may be required to pay to any government (federal, state, or local) and which are levied directly upon, or measured directly by, the sale, production, import or transportation of the Products.
- 11. Governing Law.** This Agreement shall be governed by the laws of the State of Ohio (excluding principles of conflict of laws). The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern the sale and purchase of Products hereunder.
- 12. Assignability.** Neither party may assign this Agreement without the consent of the other, which consent shall not unreasonably be withheld.
- 13. Entire Contract/Amendment.** These Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter hereof and there are no understandings or warranties, express or implied, except as set forth herein.
- 14. Separability/Waivers.** The provisions of these Terms and Conditions shall be deemed to be separable; if any part thereof is held to be invalid for any reason, the other terms and conditions hereunder shall remain in full force and effect. TOSOH USA's waiver of any breach or failure to enforce any of the provisions contained herein shall not be deemed to affect, limit or waive TOSOH USA's right thereafter to require compliance with the provisions contained herein.

TOSOH USA, INC.
STANDARD TERMS AND CONDITIONS OF SALE
FOR SILICA GLASS

TERMS AND CONDITIONS OF SALE FOR PRODUCTS OTHER THAN SILICA GLASS MATERIALS ARE ON PAGE 1.

IF TOSOH USA, INC. HAS SIGNED A SUPPLY/PURCHASE AGREEMENT WITH THE BUYER, THE TERMS AND PROVISIONS OF THAT SIGNED SUPPLY/PURCHASE AGREEMENT SHALL SUPERSEDE THE TERMS AND CONDITIONS STATED BELOW.

- 1. Acceptance.** BY ORDERING, PAYING FOR OR ACCEPTING ANY SILICA GLASS MATERIAL ("MATERIAL") SOLD BY TOSOH USA, INC. ("TOSOH"), BUYER AGREES TO ALL THE TERMS AND CONDITIONS STATED BELOW. Acknowledgement or receipt by any employee or agent of TOSOH of BUYER's purchase order or other document containing additional or different provisions or conflicting oral representations by an employee or agent of TOSOH shall not vary these Terms and Conditions and any such additional or different provisions or representations are rejected. These Terms and Conditions may be changed only by a writing signed by an authorized representative of TOSOH stating that it is modifying these Terms and Conditions.
- 2. Title, Risk of Loss, Terms.** Unless otherwise agreed, TOSOH shall arrange for shipment of Materials by common carrier to BUYER's facilities. Unless otherwise specified in TOSOH's quotation and/or order acknowledgement, title and risk of loss on the Materials shall pass to BUYER upon TOSOH's tender of delivery of Materials at the F.O.B. TOSOH's designated shipping point. TOSOH shall invoice BUYER on or after the date of each shipment hereunder. Terms of payment shall be net thirty (30) days. Any delinquent payment shall bear interest at the rate of one and one-half percent (1.5%) per month, up to the maximum rate of interest permitted by applicable law. Delivery of the Materials shall be subject to receipt of cash or credit arrangements made by BUYER for the purchase price. If payment is not made in accordance with the terms hereof, or if BUYER's credit standing has been impaired at any time, TOSOH may withhold delivery of any Materials until satisfactory cash or credit arrangements have been made, and may demand in writing that BUYER provides adequate assurances of its ability to make payments under such terms. BUYER shall pay all costs (including reasonable attorneys' fees) incurred by TOSOH to collect amounts due under this Agreement.
- 3. Force Majeure.** TOSOH shall have no liability in the event of the occurrence of contingencies beyond the reasonable control of TOSOH, including without limitation, war, terrorism, fire, explosion, flood, strike, labor disputes, accident, breakdown, emergency repair or maintenance, riot, act of governmental authority, acts of God, or any other event, whether occurring (a) to TOSOH or (b) to TOSOH's supplier(s) of Materials, interfering with the production, supply or transportation of the Materials, or with the supply or transportation of any raw material used to manufacture the Materials. In such event, the obligations of TOSOH to perform hereunder shall be suspended, and quantities so affected may be eliminated by TOSOH from the agreement to sell to BUYER without liability to TOSOH.
- 4. Allocation.** If, for reasons of Force Majeure or otherwise, TOSOH is unable to supply contracted quantities of Materials to all its customers, TOSOH may satisfy its obligations under the agreement to sell to BUYER by allocating to BUYER in any commercially reasonable manner a share of TOSOH's available supply of Materials.
- 5. Warranty/Remedies.** TOSOH hereby warrants to BUYER that at the time of shipment to BUYER, the Materials will meet TOSOH's applicable specifications for the Materials. In particular, Materials are sold to manufacturing variations or tolerances (including but not limited to typical values and no guaranteed values, and useable area advisories) as are published by TOSOH from time to time. Any defective Material shall be returned to TOSOH at TOSOH's expense and TOSOH shall bear the risk of loss of any such Material while the Material is in transit, provided that the sender has packed the Material as specified below. If sender fails to pack the Material as specified below, TOSOH's limited warranty will be null and void and the party seeking to enforce the warranty will have no warranty cause of action or remedy against TOSOH. Upon receipt of all Material packed as specified below, TOSOH will examine the Material and determine to its satisfaction that the Material is indeed defective. If TOSOH determines that the Material is defective, TOSOH shall at its option replace the Material, or refund the amount paid for the Material. THIS LIMITED WARRANTY SHALL BE THE EXCLUSIVE REMEDY FOR ANY DEFECTS IN THE MATERIAL AND BUYER HEREBY WAIVES ALL OTHER REMEDIES ARISING BY LAW OR OTHERWISE. THIS WARRANTY IS THE ONLY EXPRESS WARRANTY APPLICABLE TO THE MATERIAL AND THERE ARE NO OTHER WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF SAVE AS MANDATED BY STATUTE. **ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.** Material returned to TOSOH for any reason requires assignment of an RMA or RAN number, as applicable, and prior approval from TOSOH, which will not be unreasonably withheld. Any returned Material must be packed and shipped in the original container and packaging and in accordance with TOSOH's instructions to ensure the safety and resale value of the Material. If the original container and packaging are not available, the sending party, with approval from TOSOH, will provide packaging sufficient to prevent damage during shipping. Failure to comply with these provisions shall invalidate any claim for breach of warranty.
- 6. Limitation of Remedies.** BUYER's exclusive remedy against TOSOH, and TOSOH's total liability, for any claim, whether in contract, tort or otherwise, arising out of the purchase and sale of Materials, or alleged to have resulted from an act or omission of TOSOH, whether negligent or otherwise, including without limitation any failure to deliver, delay in delivery, product contamination, product liability or breach of warranty, shall be the purchase price for the Materials with respect to which such claim is made or, where appropriate and at the option of TOSOH in its sole discretion, to replacement of such Material. **IN NO EVENT SHALL TOSOH BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFIT, OPPORTUNITY OR GOODWILL, OR DAMAGES FOR DOWNTIME COSTS, BUSINESS INTERRUPTION OR LOSS OF USE, AS A RESULT OF ANY CLAIM BY BUYER OR ANY ACT OR OMISSION OF TOSOH.**
- 7. Claims.** TOSOH may recover from BUYER for each shipment hereunder as a separate transaction, without reference to any other shipments. BUYER shall be responsible for inspection of the Materials upon arrival at BUYER's designated location to insure conformity with the Spec Sheets. All claims relating to quantity, quality, weight, and condition of the Material included in a shipment will be deemed waived by BUYER unless written notice thereof shall be given to TOSOH within five (5) business days after arrival at BUYER's designated location.
- 8. Commitments.** BUYER acknowledges that TOSOH is only supplying raw materials, and BUYER warrants that it has used its own independent skill and expertise in connection with the selection and use of the Materials, and use or application of the Materials sold hereunder is at the sole discretion of BUYER without any liability or obligation on the part of TOSOH. Further BUYER acknowledges that it is responsible for the safe selection, unloading, handling, storage, use and disposal of Materials. BUYER warrants that it will (i) familiarize itself with Material information supplied by TOSOH at any time, including any MSDS, and (ii) follow safe handling, use, selling, storage, transportation and disposal practices and ensure that all employees, contractors, agents and customers of BUYER follow these practices, including such special practices as BUYER's use of the Materials may require.
- 9. Taxes/Customs.** BUYER shall reimburse TOSOH for all taxes, customs, duties, excises, or other charges hereafter imposed which TOSOH may be required to pay to any government (federal, state, or local) and which are levied directly upon, or measured directly by, the sale, production, import or transportation of the Materials.
- 10. Governing Law.** This Agreement shall be governed by the laws of the State of California (excluding principles of conflict of laws). The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern the sale and purchase of Materials hereunder.
- 11. Assignability.** Neither party may assign this Agreement without the consent of the other, which consent shall not unreasonably be withheld.
- 12. Entire Contract/Amendment.** These Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter hereof and there are no understandings or warranties, express or implied, except as set forth herein.
- 13. Separability/Waivers.** The provisions of these Terms and Conditions shall be deemed to be separable; if any part thereof is held to be invalid for any reason, the other terms and conditions hereunder shall remain in full force and effect. TOSOH's waiver of any breach or failure to enforce any of the provisions contained herein shall not be deemed to affect, limit or waive TOSOH's right thereafter to require compliance with the provisions contained herein.