

MICHELMAN ASIA-PACIFIC PTE LTD

GENERAL CONDITIONS OF SALE

- 1. LIMITED WARRANTY/LIABILITY.** Seller warrants it has title to the product delivered hereunder (“Product”) and may properly sell the same to Buyer and that such Product will conform to Seller’s prevailing specifications at the time of [this contract/delivery of the Product] . SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, CONCERNING THE PRODUCT OR ITS MERCHANTABILITY, FITNESS THEREOF FOR ANY PURPOSE, OR ITS NON-INFRINGEMENT. Seller shall not be liable for special, indirect, consequential or punitive damages of any kind under this Agreement or otherwise, whether or not caused by its negligence, and assumes no risk whatsoever as to the result of the use of Product either singly or in combination with other material. Buyer assumes responsibility to inspect Products on delivery, and Seller shall have no liability if Buyer uses Product that does not conform to the aforesaid specifications. Buyer represents that it is familiar with the characteristics of Product and assumes all responsibility and liability for and will indemnify and hold Seller harmless from any and all loss or injury to persons or property arising out of handling, use or possession of Product delivered to it. IN THE EVENT THAT THIS DISCLAIMER OF LIABILITY IS HELD BY A COURT OF COMPETENT JURISDICTION NOT TO APPLY TO BUYER, SELLER’S MAXIMUM LIABILITY TO BUYER ON ANY CLAIM IN ANY WAY CONNECTED WITH THE SALE OR USE OF ANY OF THE PRODUCTS, WHETHER LIABILITY ARISES IN CONTRACT, FROM BREACH OF WARRANTY, IN TORT OR OTHERWISE, SHALL BE LIMITED TO THE PRODUCT’S INVOICE PRICE.
- 2. CLAIMS.** Any claims by Buyer must be received by Seller in writing within 30 days of the date of delivery or non-delivery. Failure to deliver notice of claim to Seller within such 30 day period will constitute a waiver by Buyer of all claims in respect of such delivery or non-delivery.
- 3. PATENTS AND PATENT INFRINGEMENT.** Seller’s sale of the Product to Buyer does not convey to Buyer any license or any other right, express or implied, under any patent, trademark or proprietary right of Seller covering the Product. If the Product is specially manufactured to meet Buyer’s designs and/or specifications, Buyer shall indemnify and defend Seller against any claims or actions for unfair competition, for infringements of patents or trademarks, or for any other reason arising out of the manufacture and/or sale of the Product, and shall hold Seller harmless from all damages, costs, loss or expenses, including reasonable attorneys’ fees, arising from Seller’s compliance with Buyer’s designs or specifications. Seller reserves the right to discontinue deliveries without liability to Buyer if in Seller’s opinion the manufacture, sale or use of Product as such would infringe any patent not held by or licensed to Seller.
- 4. SEPARATE SALES.** Each delivery of Product shall constitute a separate sale with the same effect as though made under a separate Agreement covering the amount thereof. Any delivery or default by Seller with respect to any delivery shall not affect Buyer’s obligation to order, accept and pay for any other deliveries.
- 5. REMEDIES.** If Buyer commits a breach of any of the provisions of this Agreement; or if Buyer defaults in the payment of any indebtedness to Seller whether or not under this Agreement; or if any bankruptcy, receivership, insolvency or reorganization proceedings are instituted by or against Buyer, then in any such event Seller shall have the right, in addition to any other rights and remedies it may have, to suspend deliveries hereunder or to terminate this Agreement.
- 6. WAIVER.** Any waiver by the Buyer or the Seller (together, the “Parties and each a “Party”) of strict conformance with any of the terms and conditions of this Agreement shall not be a waiver of any subsequent failure to comply with such terms and conditions.
- 7. ENTIRETY OF CONTRACT.** This Agreement and attachments contain the entire understanding between the Parties. Any other communications, representations or agreements between the Parties concerning the purchase and sale of Product are hereby superseded. No interpretation, revision or amendment to this Agreement shall be effective unless stated in writing and signed by a duly authorized representative of each of the Parties. All purchase orders or purchase acknowledgements which may be used to order or acknowledge orders for delivery of Product shall be deemed intended for record purposes only, and any terms or conditions contained therein shall not serve to add to or modify the terms and conditions of this Agreement.
- 8. ASSIGNMENT.** This Agreement shall not be assigned by Buyer without the prior written consent of Seller.
- 9. FORCE MAJEURE.** Neither Party shall be liable for any failure or delay in performance hereunder which may be due, in whole or in part, to fire, explosion, strike or labor difficulty, accident, breakdown of machinery or equipment, curtailment in the supply of natural gas, whether pursuant to actions or proceedings already or hereafter commenced, inability to obtain power, labor or materials, including Product, from normal sources of supply, transportation or handling accidents or delays, act of God, act, order, regulation or request of government or other public authorities, war riot, or civil disorder or any other cause or causes of any nature beyond the control of the Party affected. In the event of curtailment of supply of Product due to any causes, Seller shall have the right to apportion deliveries of Product on such basis as may appear to it to be equitable. Any accepted order which, due to any causes, shall not have been filled by the end of the Agreement term, may be cancelled by either Party with respect to Product not then delivered.
- 10. GOVERNMENTAL PRICE CONTROL.** If because of government regulation Seller is **not** able to receive such price, including any revised price, established pursuant to this Agreement, Seller may accept the maximum price allowed by law but shall nevertheless have the option at any time to terminate this agreement with ninety days’ written notice of termination to Buyer.
- 11. GOVERNMENTAL REGULATION.** If pursuant to government regulation, Seller is required to make studies, conduct tests, purchase equipment or make modifications at any of its plants where Product is manufactured, and the costs of compliance with such regulation are in Seller’s sole judgment economically burdensome, Seller may terminate this Agreement with ninety days’ written notice of termination to Buyer.
- 12. GOVERNING LAW.** This Agreement shall be governed by and construed under the laws of Singapore. For international orders, the validity, construction and performance of the terms shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods, which shall be excluded from this contract in its entirety; rather, they shall be governed by and construed exclusively in accordance with the laws of Singapore, excluding its conflicts of laws provisions. In the event that any provision of the terms shall be held unenforceable, the remaining provisions of the terms nevertheless shall remain in full force and effect. In the case of shipments outside of Singapore, the trade terms as used herein shall be interpreted according to the provisions of *INCOTERMS – 2010* Edition of the International Chamber of Commerce.
- 13. NOTICES.** Any notices required or permitted by this Agreement shall be sent by registered or certified mail, return receipt requested to the Parties at the addresses for the Parties set forth at the beginning of this Agreement.
- 14. PRICES.** All prices are subject to change without notice. All applicable sales, use, excise and other taxes will be billed to and shall be paid by Buyer unless a satisfactory tax exemption certificate has been furnished prior to shipment.
- 15. PAYMENT.** Payment is to be made by Buyer by way of Cash in Advance, unless otherwise negotiated, and in respect of all payments time shall be of the essence. Seller may charge interest at the maximum rate permitted by law on amounts past due. All credit sales are subject to approval by Seller. Prices quoted are in U.S. dollars and all payments shall be made in U.S. dollars. Export orders require payment by means of an irrevocable Letter of Credit confirmed by a bank located in Singapore.
- 16. CANCELLATIONS.** Buyer understands and agrees that upon Seller’s acceptance of a Purchase Order, Seller will incur significant expenditure to source and deliver the Products to Buyer. As such, once a Purchase Order is accepted by Seller, Buyer may not revoke or cancel the Purchase Order. Should Buyer attempt to cancel a Purchase Order or refuse delivery of a shipment of ordered Product, Seller, at its sole option, may make commercially reasonable efforts to sell the Product to a third party but Buyer shall remain liable to Seller for the price difference between the agreed upon sale price and the price actually obtained by Seller, together with all costs and expenses of Seller in locating a new buyer or buyers and consummating such transaction(s), including without limitation, shipping, storage, insurance and attorneys’ fees and expenses. Buyer understands that its Product may be specialized Product such that it is not saleable to third parties in a commercially reasonable manner and in such case Seller shall be relieved of any obligation to mitigate damages and Buyer shall be liable for the full invoiced amount.
- 17. LEGAL FEES AND EXPENSES.** Buyer shall pay Seller’s reasonable legal fees (including solicitors’ fees) and other costs incurred in connection with collecting any sums owed by Buyer or otherwise enforcing its rights against Seller.
- 18. JURISDICTION.** In any action between Buyer and Seller relating to the Product or these terms, Buyer consents and submits to the exclusive jurisdiction of the Singapore courts and agrees that the Singapore courts are the most appropriate venue for any such action. If Buyer is located outside of Singapore, Seller reserves the right to initiate legal action against Buyer in a court located outside of Singapore.
- 19. MATERIAL SAFETY DATA SHEET.** Seller will make available to Buyer upon request a material safety data sheet which sets forth information concerning the material and describes certain precautions to be taken in the storage and handling of the same. Buyer shall be responsible for knowing all such information and precautions disclosed in said material safety data sheet and conveying the same to persons who may be exposed to the material.