

## **Terms & Conditions of Sale Canada**

The following are Bakelite's Terms and Conditions of Sale Canada for the sale of its products and services:

1. **GOVERNING TERMS.** These Terms and Conditions of Sale Canada are the only terms which govern the sales of products and/or services (collectively "products") by Bakelite to any party purchasing any products or services from Bakelite (a "Buyer"). "Bakelite" means any entity of the Bakelite Synthetics group that sells products under the applicability of these Terms and Conditions of Sale Canada. Bakelite's agreement to sell products is expressly conditioned upon Buyer's acceptance of these Terms and Conditions of Sale Canada, and Bakelite expressly rejects any terms and conditions set forth in Buyer's purchase order or other document which differ from these Terms and Conditions of Sale Canada and which have not been expressly agreed to in a writing signed by a duly authorized representative of Bakelite.
2. **PRICE ADJUSTMENTS.** Bakelite may change any price, payment, freight charge or freight term in effect at any time and from time to time by giving Buyer at least fifteen (15) days written notice thereof. Buyer's failure to give Bakelite written notice of objection to any such change prior to its effective date shall constitute acceptance of such change. Bakelite shall advise Buyer within fifteen (15) days from receipt of any such notice of objection whether Bakelite will (a) continue to deliver or perform at the price in effect prior to the announced change or (b) cancel this contract. The price, payment or freight term at which each order shall be filled or at which services shall be provided shall be that which is established by Bakelite at the time the products are shipped or the services are performed.
3. **PRICE CONTROLS.** If Bakelite is prevented from changing any price in effect by any governmental law, order, regulation or ruling, then Bakelite may cancel this contract by giving Buyer thirty (30) days written notice thereof.
4. **TAXES.** Any tax or other governmental charge or increase thereof hereafter becoming effective, other than income taxes, increasing the cost to Bakelite of producing, selling, or delivering the product or of procuring any material used therein, or of providing the services, may, at Bakelite's option be added to the purchase price. Any tax or other governmental charge payable due to the sale, use or delivery of the products or services, such as, but not limited to, harmonized sales tax, goods and services tax, provincial sales tax, value added tax, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority shall be paid by Buyer.
5. **SHIPMENTS.** Buyer shall give Bakelite reasonable written notice of orders and shipment dates, and unless otherwise specified herein, shall take deliveries in approximately equal monthly quantities. The quantity shipped in any month may be limited by Bakelite, in addition to other remedies, to either (a) the average of the monthly quantities ordered by Buyer during the preceding months under this contract, or (b) one-twelfth (1/12) of the applicable maximum or estimated annual quantity.
6. **WEIGHTS.** Bakelite's weights and/or measurements shall govern unless proved to be in error.
7. **CONTAINERS.** If shipment requires use of returnable containers or tote bins, title to such containers and tote bins shall remain in Bakelite and a deposit in an amount required by Bakelite shall be made at the time the shipment is ordered. Such containers and tote bins shall be returned in good condition within sixty (60) days from the date of shipment, freight charges collect. Upon such return, Bakelite shall refund the deposit.

8. DELIVERY EQUIPMENT. Buyer shall unload and return delivery equipment furnished by Bakelite to the carrier within two (2) hours after arrival in the case of delivery by truck and within seven (7) days after arrival in the case of delivery by railcar. Any demurrage or detention charges on such equipment shall be paid by Buyer.
9. CARRIER AND ROUTING. If the terms of shipment require Bakelite to pay freight, selection of carrier and routing of shipment shall be at Bakelite's option.
10. TITLE AND RISK OF LOSS. Title to and risk of loss in the products shall pass to Buyer upon Bakelite's delivery to the carrier at the shipping point, notwithstanding the terms of shipment specified in this invoice/acknowledgment.
11. PAYMENT AND CREDIT. Payment will be due within thirty (30) days of the invoice date. If Buyer fails to pay for any one or more shipments or any services when due, then Bakelite shall have the right, in addition to other remedies, either (a) to suspend further deliveries or services, (b) to require cash payment on further deliveries or services, or (c) to cancel this contract. Should Buyer's financial responsibility become unsatisfactory to Bakelite, cash payment or satisfactory security may be required by Bakelite before proceeding with further deliveries or services. Such election by Bakelite shall not relieve Buyer from ordering, accepting and paying for the contracted quantity or the contracted services. In the event that any payment is not received by Bakelite when due, finance charges shall accrue beginning the date after the due date at the rate of one and one-half percent (1 1/2%) per month on the unpaid balance. If at any time the finance charges assessed to Buyer shall be determined to be in excess of the maximum finance charges permitted by the applicable laws, then the finance charges shall be reduced so as to equal the maximum permissible amount. Under those circumstances, the sole remedy of Buyer shall be the recovery of finance charges paid in excess of the maximum permissible amount. Buyer shall not be entitled to avoid payment of all or any part of the principal amount due, to recover penalties against the Company, or to obtain any other form of relief.
12. BUYER OBLIGATIONS. Buyer shall: (a) cooperate with Bakelite in all matters relating to services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Bakelite, for the purposes of performing the services; (b) respond promptly to any Bakelite request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Bakelite to perform services in accordance with the requirements of the contract; (c) provide such Buyer materials or information as Bakelite may reasonably request to carry out the services in a timely manner and ensure that such Buyer materials or information are complete and accurate in all material respects; and (d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the services before the date on which the services are to start.
13. INSURANCE. During the term of the contract and for a period of two (2) years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than five million dollars (\$5,000,000) with financially sound and reputable insurers. Upon Bakelite's request, Buyer shall provide Bakelite with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these terms. The certificate of insurance shall name Bakelite as an additional insured. Buyer shall provide Bakelite with thirty (30) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, to the extent of Buyer's liability under this contract Buyer shall require its insurer to waive all rights of subrogation against Bakelite's insurers and Bakelite.

14. **PRODUCT AND SERVICES SUITABILITY.** Determination of the suitability of the products and services for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer. Buyer assumes all risks and liabilities for results obtained by the use of the product and services, whether used singly or in combination with other material, except those relating solely to the use of product not conforming to Bakelite's specifications, which non-conformity is not known to Buyer and is not discoverable by Buyer, by testing or otherwise, prior to the use thereof by Buyer or others. Any suggestions or recommendations made by Bakelite concerning uses or applications of the product are believed to be reliable, but Bakelite makes no warranty or guarantee of the results to be obtained since the conditions of the use and application by Buyer and others are beyond Bakelite's control.

15. **WARRANTIES AND DISCLAIMERS.** BAKELITE MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE PRODUCT OR SERVICES OR THE MERCHANTABILITY OR FITNESS THEREOF FOR ANY PURPOSE, except (a) that the products shall conform to Bakelite's specifications; (b) that Bakelite shall convey good title in the products to Buyer and that the products shall be delivered free from any lawful lien or encumbrance; and (c) that the products do not infringe any valid Canadian patent. Bakelite does not warrant, however, that the use of the products, or articles made therefrom, either alone or in conjunction with other materials, will not infringe any Canadian patent.

16. **CLAIM PERIOD.** Buyer shall inspect each delivery of product promptly following receipt and service performance results promptly following completion. Claims shall be made within thirty (30) days after receipt of the delivery of product or after completion of the services to which the claim relates, or if for non-delivery of products or nonperformance of services, within thirty (30) days after the scheduled delivery or performance date thereof. Buyer's failure to give Bakelite written notice of any claim within the applicable time period shall constitute an absolute and unconditional waiver of such claim. In no event shall Buyer commence any action under this contract later than one year after the cause of action has accrued.

17. **LIABILITY LIMITATIONS.** Buyer's exclusive remedy with respect to products shall be, at Bakelite's option (a) replacement of the product or (b) direct damages no greater in amount than the purchase price of the product in respect of which damages are claimed. Buyer's exclusive remedy with respect to services shall be, at Bakelite's option (a) repair or re-performance of the service or (b) direct damages no greater in amount than the purchase price of the service in respect of which damages are claimed. Notwithstanding the foregoing no claim of any kind, whether as to product delivered or for non-delivery of product or as to services or for non-performance of services, and whether based on contract, breach of warranty, negligence or otherwise, shall be greater in amount than the purchase price of the quantity of the product or service in respect of which damages are claimed. IN NO EVENT SHALL BAKELITE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, WHETHER CONTRACTUAL, EXTRA-CONTRACTUAL OR OTHERWISE.

18. **PRODUCT CHARACTERISTICS.** Buyer shall familiarize itself with the characteristics of the products, and shall comply with all laws, regulations, and standards applicable to the possession, handling, processing or use of the product by Buyer, including, but not limited to, the Canadian Centre for Occupational Health and Safety Act of 1985, or other federal guidance, and to the regulations and standards issued pursuant thereto. Without limiting the generality of the foregoing, Buyer agrees to handle the products in a manner consistent with good product stewardship practices and accepted safe handling guidelines with respect to the characteristics or risks as noted on Bakelite's Material Safety Data Sheets. If Bakelite observes unsafe handling, storage or use of the product, Bakelite reserves the right, but is under no obligation, to stop further deliveries until the unsafe situation is remedied satisfactorily by Buyer.

19. GENERAL INDEMNITY AGREEMENT. Buyer shall defend, indemnify and hold Bakelite harmless from and against all claims, liabilities, attorneys' fees, costs and expenses (including, but not limited to, those related to injury to or death of Buyer's employees) arising from or connected with the services, possession, handling, processing or use of the product by Buyer or others, except those resulting solely from the use of products not conforming to the contracted specifications, which non-conformity was not known to Buyer and was not discoverable by Buyer, by testing or otherwise, prior to the use thereof by Buyer or others. Bakelite may participate in the defense of any such claim for the further protection of its own interests.

20. INDEMNITY AGREEMENT FOR SOLID PRODUCTS. Bakelite's solid products, including but not limited to powder and flake resin products, can be combustible and present a fire or explosion hazard under certain conditions (including but not limited to when dusts are finely divided and suspended in air, and/or allowed to accumulate on surfaces). Buyer shall comply with all laws, regulations and standards applicable to the possession, handling and use of all solid products by Buyer, including but not limited to the National Fire Code of Canada, and other federal guidance, and shall defend, indemnify and hold Bakelite harmless from and against all claims, liabilities, attorneys' fees, costs and expenses (including but not limited to those relating to injury to or death of Buyer's employees) arising from or connected with the possession, handling, processing or use of the products by Buyer or others. This indemnity agreement is in addition to the General Indemnity Agreement contained in Section 19, above.

21. INDUSTRIAL USE (FOR FORMALDEHYDE SALES ONLY). The product sold by Bakelite hereunder is for industrial use only. Buyer acknowledges that Bakelite's products are not, and are not required to be, manufactured or labeled by Bakelite pursuant to the federal guidelines applicable to the production or labeling of pesticides, drugs, cosmetics, medical or personal care products. Further, Bakelite does not, and is not required to, hold an EPA registration under the Pest Control Products Act covering pesticide use or labeling for the products sold hereunder, and Bakelite has not obtained, and is not required to obtain, any Health Canada approval covering any drug, cosmetic or personal care use or labeling of the products, either for humans or animals. Any use or resale by Buyer of the product sold hereunder may be subject to such manufacturing, registration and labeling requirements. Buyer certifies that any use or resale of the products by Buyer will only be in a manner which complies with its obligations under applicable laws and Buyer shall refrain from misuses of the products. Buyer acknowledges that it has received Bakelite's Formaldehyde Industrial Use Notice and shall ensure that it and its officers, agents and employees at all times conduct its activities in full compliance with the principles provided in such notice. Buyer will provide a copy of Bakelite's Formaldehyde Industrial Use Notice, or a substantially similar notice, to any third party to which it distributes or resells the products.

22. EXCUSE. Neither Bakelite nor Buyer shall be responsible or liable for any delay or failure to deliver or take delivery, of any or all of the product, or to perform or receive services if occasioned by: act of God, fire, flood, embargo, explosion, accident, breakdown of machinery or equipment; shortage of or inability to obtain fuel, power, raw materials, equipment, transportation, or the product itself, without litigation and at usual prices or from usual sources; good faith compliance with any law, regulation, standard, order, rule or recommendation made by any governmental authority; strike or labor controversy (neither Bakelite nor Buyer shall be required to settle any labor matter against its own best judgment); any cause or circumstance beyond Bakelite's or Buyer's reasonable control; or any other cause or circumstance, whether similar or dissimilar to the forgoing, which makes impracticable (a) the production, transportation or delivery of the product or any material used in or in connection with its production or (b) the provision of services; and the contracted quantity shall be reduced to the extent of the quantities not delivered due to any such cause or circumstance. In no event shall Bakelite be obligated to purchase product, or to deliver from any plant or facility other than the shipping point specified herein to replace the quantities not delivered due to any such cause or circumstance.

23. NOTICE/ALLOCATION. The party excused in whole or in part shall give written notice thereof to the other party with reasonable promptness. In the event of any cause or circumstance excusing Bakelite, Bakelite shall have the right to utilize its available production and/or supply to satisfy its own requirements, including those of its subsidiaries and affiliates, in full, and to allocate any remaining production and/or supply among its customers, including those not under contract, in a fair and reasonable manner, and Buyer hereby releases Bakelite from responsibility or liability for any resulting incomplete fulfillment of this contract.

24. EXPORT CONTROLS COMPLIANCE. Buyer acknowledges that Bakelite is a Canadian company and is subject to Canadian laws and regulations, and that Bakelite products are subject to Canadian export controls. Canadian export controls may apply to the product even after it is incorporated into another product that is manufactured outside of Canada. Buyer is responsible to ensure compliance with Canadian export controls in the use of Bakelite Products. Bakelite will not participate in a transaction when it knows or has reason to know that the transaction would violate Canadian exports controls, including where Bakelite products are intended to be re-exported to a sanctioned country or proscribed end-use or end-user, contrary to Canadian law. Bakelite will not be obligated to proceed with and is excused from performance of any transaction when it reasonably believes that Canadian export controls would be violated in relation to the transaction.

25. CONFIDENTIALITY. The parties may exchange or be exposed to confidential information of the other during the performance of this contract. Each of the parties agree to retain the other's confidential information in confidence, use it only for the purposes of conducting business hereunder, and not to disclose it outside the company without express authorization of an officer or business director of the other. Upon expiration or termination of this contract, the parties agree that the foregoing duties shall continue for a period of five (5) years after termination. Confidential information includes, but is not limited to, business and strategic plans, financial records, prices and price lists, customer and vendor lists, drawings and technical information about each party's products, processes and equipment, employee identities and abilities which either party learns from the other party or learns as a result of its presence at any of the other party's plants. Confidential information does not include information that is in the public domain or information received on a non-confidential basis from a third party or information already in the receiving party's possession.

26. WAIVER. No waiver by either party of any breach of any of the terms or conditions contained herein shall be construed as a waiver of any succeeding breach of the same or any other term or condition contained herein. Nothing contained herein shall limit the remedies of Bakelite in the event of Buyer's breach of any term or condition contained herein.

27. RELATIONSHIP OF THE PARTIES. The relationship between the parties is that of independent contractors. Nothing contained in the contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

28. ENTIRE CONTRACT. This contract supersedes all prior contracts and constitutes the entire agreement and understanding between the parties covering the sale and purchase of services or the product. No modification hereof shall be effected by the use of purchase order, acknowledgment, acceptance or other forms at variance with or in addition to the terms and conditions contained herein. This contract may only be modified or amended by a written instrument executed by authorized agents of each of the parties.

29. NON-ASSIGNABILITY. This contract shall not be assigned by Buyer without the prior written consent of Bakelite.

30. SEVERABILITY. Any provision hereof which is contrary to law shall not invalidate any other provision hereof and shall be severed and deleted herefrom.

31. GOVERNING LAW. This contract shall be governed by and construed with laws of the Province of Québec and the federal laws of Canada, exclusive of its conflicts of laws, rules and of any principles therein that would require the application of The United Nations Convention on Contracts for the International Sale of Goods ("CISG"). CISG shall not apply to this or any other agreement between the parties.

32. CHOICE OF FORUM. Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to these Terms and Conditions of Sale Canada, including all exhibits, schedules, attachments, and appendices attached to these Terms and Conditions of Sale Canada, and all contemplated transactions, shall be instituted in the courts of the Province of Québec, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. Each party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

33. TERMINATION. In addition to any other remedies available to Bakelite at law, equity or under this contract, Bakelite may terminate this, or any other, contract with the Buyer if: (a) Buyer fails to perform its obligations under or otherwise breaches any provisions of this contract or any other contract between the Buyer and Bakelite or any of Bakelite's affiliates; (b) Buyer becomes unable to pay its debts as they become due or institutes or suffers the institution against it of bankruptcy, reorganization, liquidation receivership or similar proceedings; or (c) any term, condition or provision of this contract or any other contract between the Buyer and Bakelite becomes invalid or illegal under any applicable law, rule or regulation. Buyer hereby waives any and all rights of termination, resiliation, cancellation or annulment of this contract it may have at law, in equity or otherwise, including without limitation the rights set forth in Section 2125 of the *Civil Code of Québec*.