



# Multibase Sales Conditions

## 1. ACCEPTANCE

Multibase's acceptance is subject to the availability of stock and to Multibase's prices in effect at time of shipment.

## 2. LIMITED WARRANTY

Multibase warrants only that the Goods meet its sales Specifications in effect at the time of shipment. MULTIBASE DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Buyer is solely responsible for determining the suitability of the Goods purchased for the use contemplated by Buyer and Buyer assumes all risk and liability for loss or, damage to property out of the use or possession of the Goods furnished under this Agreement.

## 3. EXCLUSIVE REMEDY

Buyer's exclusive remedy and Multibase's sole responsibility for any claim or cause of action arising under this Agreement is expressly limited to either (1) replacement or refund of the purchase price of all Goods shown to be other than as warranted, or (2) payment not to exceed the purchase price of the specific goods for which damages are claimed. Any refund or replacement is conditional on Buyer giving Multibase notice within 30 days of the expiration of the shelf life that the Goods are other than as warranted.

## 4. TOTAL LIABILITY

The total liability of Multibase to the Buyer for any claim brought under these terms whether in contract, tort or for breach of statutory duty shall not exceed twice the purchase price of the Goods relating to the claim. In addition, such total liability shall be subject to the limitations of Clauses 3 (above) and 5 (below) to the extent such clauses are legally applicable.

## 5. DISCLAIMER OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.

IN NO EVENT SHALL MULTIBASE BE LIABLE TO BUYER WHETHER IN CONTRACT OR TORT OR FOR BREACH OF STATUTORY DUTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR FINANCIAL DAMAGES, INCLUDING WITHOUT LIMITATION CLAIMS FOR INDEMNIFICATION, LOST REVENUES AND PROFITS EVEN IF MULTIBASE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THESE TERMS IS INTENDED TO EXCLUDE OR LIMIT LIABILITY FOR PERSONAL INJURY ARISING FROM DOW CORNING'S NEGLIGENCE OR MISREPRESENTATION IN THE SUPPLY OF GOODS HEREUNDER.

## **6. PRICE AND PAYMENT TERMS**

Any applicable taxes or government charges may, at Multibase's option, be added to Multibase's price in effect at the time of shipment. The payment terms and due date shall be those stated on the front of this form. If payment is not received within the due date, Multibase may charge interest at a monthly rate of 1.5%, or the maximum rate allowed by applicable law, whichever is less, on all overdue amounts without notification. The Payment Due Date is the date Multibase expects to RECEIVE payment. Unauthorized payment deductions are not allowed for any reason and may interrupt product delivery.

## **7. FREIGHT TERMS AND TRANSFER OF TITLE:**

The freight term on the front of the Order Acknowledgement shall control. If no freight term is specified, then the goods will be shipped (Incoterms 2000) FCA Multibase Site for rush orders and CIP Named Destination for other orders. Title to the goods transfers to Buyer upon delivery of the goods to the carrier.

## **8. CONTINGENCIES**

Multibase will incur no liability from delay in performance, non-performance or other failure to meet any obligation to the Buyer caused by circumstances beyond its control including but not limited to: war, fire, flood, strike, labor troubles, breakage of equipment, accident, riot, act of governmental authority, or Acts of God or in the inability to obtain, on terms judged reasonable by Multibase, raw materials (including energy source) used in connection with the Goods. In the event information becomes available to Multibase or Buyer which indicates a significant increased risk of potentially adverse human or environmental effects associated with the manufacture, sale, use, or disposal of the Goods, or raw materials or intermediates which are used to manufacture the Goods, either party may terminate this Agreement without penalty or further obligation by providing written notice to the other.

## **9. PATENTS**

Multibase shall, at its own expense, defend and control any suit brought against Buyer for direct infringement of any Patent having a claim or claims covering either the Goods themselves or Multibase's methods of manufacturing the Goods. Multibase shall pay any award of damages assessed against Buyer in any such suit, but only to the extent that the damages are awarded specifically in connection with the alleged infringement. Multibase will only be liable for the above defense and payment of damages if Buyer gives Multibase written notice within 15 days of Buyer becoming aware of such suit. Multibase will not be liable for the above defense or payment of damages and Buyer shall hold Seller harmless against any claim, loss or expense (1) where the suit alleges that the USE of the Goods infringes a patent or (2) where the Goods are produced according to Buyer's specifications, formulations or instructions. The above fully expresses Buyer's exclusive remedy and Multibase's sole responsibility with respect to infringement of any patent for the Goods supplied under this Agreement and MULTIBASE EXPRESSLY DISCLAIMS ANY WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED WARRANTY AGAINST INFRINGEMENT with respect to the Goods.

## **10. ENTIRE AGREEMENT AND APPLICABILITY OF TERMS**

This document and the sales specifications represent the entire agreement between Multibase and Buyer with respect to the sale of the goods. No additional or different terms in Buyer's order or any other document shall create any additional

Buyer rights or Multibase obligations. Due consideration will be given to any request of Buyer for modification, cancellation or release against an order, but orders cannot subsequently be canceled except by mutual agreement. Multibase's waiver of a breach by Buyer of any provision of the Agreement shall not constitute a waiver of any other breach, or a subsequent breach of the same provision for the same or any other cause, by Buyer.

## **11. RESPONSIBLE CARE:**

Buyer agrees to manage its business consistent with the guiding principles of the Responsible Care initiative of the American Chemistry Council or a similarly comprehensive health, safety and environmental program.

## **12. APPLICABLE LAW AND COMMENCEMENT OF SUIT**

This Agreement shall be governed by and construed in accordance with the laws of France without reference to the principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply. Any dispute shall be litigated exclusively in Grenoble, France and must be commenced within two (2) years after the cause of action has accrued.

## **13. EXPORT CONTROL**

Buyer agrees to adhere to applicable export control laws and regulations and will not export, re-export, resell, or transfer the Product except in accordance with such laws and regulations. Buyer confirms that, unless otherwise authorized under applicable export control regulations, Buyer will not use or transfer the Product for use in the development, production, operation, or maintenance of nuclear applications or facilities, chemical or biological weapons or rocket systems or unmanned air vehicle applications.

**Multibase**  
**A Dow Corning Company**

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Last revision date : August 2009  
#09MARCOM33.V1