

TERMS & CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these conditions the following words and expressions shall have the meanings ascribed to them below save where this is inconsistent with the context.

"Agent" a person, firm or company nominated in Writing by the Seller to act on its behalf.

"Buyer" the person, firm or company who accepts the quotation of the Seller for the sale of Goods or whose order for the goods is accepted by the Seller.

"Goods" the goods (including any instalments for the goods or any parts for them) which the Seller is to supply to the buyer and which are supplied in accordance with these Conditions.

"Seller" Polyfior Limited (registered in England and Wales under number 743538).

"Conditions" the terms and conditions of sale set out in this document and any special terms and conditions agreed in Writing between the Buyer and the Seller.

"Contract" the contract between the buyer and the seller for the purchase and sale of the Goods which incorporates these Conditions.

"Price" the price of the Goods to be paid by the Buyer to the Seller.

"Writing" includes, facsimile and email.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their representation.

1.4 Singular includes plural and vice versa.

1.5 **"Verbal Orders"** means any orders received from the Buyer and accepted by the Seller by telephone.

1.6 Any phrase introduced by the terms "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase these Goods in accordance with any written quotation of the Seller which is accepted by the Buyer (in accordance with clause 3.2), or any written order of the Buyer which is accepted by the Seller (in accordance with clause 3.1), subject in either case to these Conditions, which shall govern the Contract to the exclusion of and shall be deemed to take precedence over any other terms and conditions (save in the event that any of these Conditions are illegal or unenforceable pursuant to the laws of England from time to time applicable).

2.2 No variations to these Conditions shall be binding unless expressly agreed in Writing between the Buyer and the Seller or their authorized representatives.

2.3 In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any representations unless expressly made in Writing by an authorised representative of the Seller.

2.4 These Conditions shall apply to all sales (including export sales) by the Seller.

3. ORDERS AND SPECIFICATIONS

3.1 Any order submitted by the Buyer shall be deemed to be accepted by the Seller at such time as the Seller commences work upon such order.

3.2 No quotation submitted by the Seller shall be deemed to be accepted by the Buyer unless and until confirmed in Writing by an authorized representative of the Seller.

3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order or quotation, and the quantity, quality and description of, and any specification for, the Goods shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 The Seller makes no representation as to the fitness and adequacy of the Goods for the use of the Buyer, whether or not the Buyer has made known the intended use of the Goods to the Seller.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or statutory requirements, or where the goods are to be supplied to the Seller's specification which do not materially affect the quality of performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on such terms and subject to such cancellation fee as the Seller in its absolute discretion may consider appropriate to cover all losses including loss of profit incurred, as a result of the cancellation.

3.7 No addition or variation to any contract may be made by the Buyer. Any purported addition or Variation shall be treated as a separate and additional order to the Contract and shall be priced separately in accordance with Clause 4.

3.8 The Seller makes no warranty that, and the buyer acknowledges that, no colour match can be guaranteed from batch to batch.

3.9 Orders for non-standard Goods may not be varied by the Buyer once the Seller has either: commenced the manufacture of; or ordered any materials and/or equipment for the Goods.

3.10 In the case of verbal orders the Buyer will be asked for verbal confirmation of his order by the seller at the end of the telephone call. When this confirmation has been given by the Buyer no verbal order can be cancelled by the Buyer except under the conditions stated in clause 3.6 above.

4. PRICE OF THE GOODS

4.1 The Price of the Goods shall be the price stated in the Seller's quotation or, where no Price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of an order from the buyer or of a quotation by the Seller (as appropriate) ("Relevant Price List"). Where the Goods are supplied to the Buyer specifically for export from the United Kingdom, the Seller's published export price list shall apply where no price has been specifically quoted. All prices quoted are valid for 30 days only or such other period as may be stated in the relevant quotation, or until earlier acceptance by the Buyer after which time the Price of Goods quoted for shall be the Price listed in the Relevant Price List.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price of Goods to reflect any increase in cost to the Seller which is due to any factor beyond the control of the Seller, including the failure of the Buyer to give the Seller prompt and/or adequate information or instructions or to take delivery.

4.3 The Price is exclusive of any applicable value added tax ("VAT") payable on the Goods which the Buyer shall be additionally liable to pay the Seller.

4.4 In addition to the Price and VAT the Buyer shall be obliged to pay a carriage charge in respect of certain items and quantities as detailed on the Relevant Price List.

4.5 All pallets and returnable containers used for the purpose of delivery of the Buyer's order must be returned in an undamaged condition to the Seller before the due payment date.

4.6 Any quotations which are given in respect of the supply of Goods and fixing are given subject to clause 5.1 and also subject to the work

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required only to be carried out during normal working hours and under normal conditions. In the event that any quotation given pursuant to this clause 4.6 is not accepted within the time limit specified in such quotation or if no such limit is specified, within 30 days of the date of quotation, the proposed buyer shall be required to have a revised quotation issued. In the event that all or any of the work is not carried out during normal working hours, or under normal working conditions or is delayed or suspended for whatever reason including those matters set out in clause 10 then the Seller reserves the right to charge such additional fees as it considers appropriate in the circumstances.

4.7 The Buyer shall be entitled to a discount for early settlement on the Price of Goods (exclusive of any carriage and/or fixing charge) provided the amount of settlement discount and due date for payment is agreed in writing between the Buyer and the Seller.

5. TERMS OF PAYMENT

5.1 The Seller shall be entitled to invoice the Buyer for the Price together with VAT and any carriage charge (as set out in clause 4.4) on or at any time after the Goods are deemed to be delivered in accordance with clause 6.1.

5.2 The Buyer shall pay the Price of the Goods (less any discount the Buyer is entitled to pursuant to clause 4.7 but without any other deduction) by the 25th day of the month following the month during which the Invoice in respect of the Price of the Goods is issued by the Seller (or if not a working day, the next preceding working day) notwithstanding that delivery (as defined in clause 6) may not have actually taken place and that the property in the Goods has not passed to the Buyer. The time for payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only on request.

5.3 If the Buyer fails to make payment in full by the due date for payment in accordance with clause 5.2 in respect of the Contract or in respect of any other goods or services provided to the Buyer by the Seller or any 'subsidiary' or 'holding company' of the Seller (as defined in Section 1159 of the Companies Act 2006) then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled:-

5.3.1 to cancel the Contract and/or suspend any further deliveries to the Buyer;

5.3.2 to charge the Buyer interest (both before and after any judgement) on the amount unpaid calculated on a daily basis, at the rate of 2% per annum above the base rate for the Seller's bank from time to time applying, from the due date of payment until payment in full is made; and

5.3.3 to recover the Goods as provided for in clause 8.

5.4 The Buyer shall not, without the written agreement of the Seller be entitled to deduct or set off from any payment due under the Contract any claim for loss or expense alleged to have been incurred by the Buyer by reason of any breach or failure to observe the provisions of this or any other contract by the Seller and the Buyer expressly waives any common law right of set off to which it may be entitled.

5.5 Notwithstanding the foregoing the Seller reserves the right to require payment of the Price together with VAT and any charge in respect of packaging and carriage before delivery of any Goods or at any time thereafter.

6. DELIVERY

6.1 Delivery of the Goods shall be deemed to take place either:-

6.1.1 by the Seller delivering the Goods to such place as is agreed with the Seller and (or the purpose of this clause 6.1.1 delivery shall be deemed to take place immediately upon the arrival of the delivery vehicle at the premises of the Buyer or of any nominated third party, as the case may be;

6.1.2 by the Buyer collecting the Goods at the Seller's premises and for the purpose of this clause 6.1.2 collection shall be deemed to take place immediately upon the arrival of the collection vehicle at the premises of the Seller or such other place as the Goods are to be collected from, or immediately upon the Seller notifying the buyer that the Goods are ready for collection, whichever is the earlier; or

6.1.3 at the time stated for delivery, or if none is stated, when the Seller would have made the delivery but for the failure of the Buyer to provide the Seller with adequate delivery instructions.

6.2 Any dates quoted for delivery of the Goods by the Seller are approximate only.

6.3 Where the Goods are to be delivered in instalments, each delivery shall for the purposes of clause 5 constitute a separate Contract, but failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 The Seller shall not be liable for any delay or failure to deliver the Goods save in the event of wilful default. In the event that the Seller is liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the Price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-

6.5.1 store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all storage and selling expenses) account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the contract together with interest as provided in clause 5.3.2.

7. RETURNS

7.1 Goods supplied in accordance with the Contract cannot be returned without the Seller's prior written consent.

8. RISK AND PROPERTY

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of deemed delivery in accordance with 6.1.

8.2 Notwithstanding the passing of risk in the Goods, or any other provision of these Conditions, the ownership, property and legal title of all Goods supplied by the Seller shall not pass to the Buyer until payment in full of all sums owing to the Seller under this or any other Contract, has been received by the Seller in cleared funds.

8.3 Until such time that the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate to those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

8.4 Without prejudice to the foregoing clauses the Buyer shall be at liberty to sell the Goods as the Seller's Agent by way of bona fide sale in the usual and proper course of its business and in such event the relationship between the Seller and the Buyer shall be of fiduciary nature and the Buyer shall hold the proceeds of sale to the Seller's account and on the Seller's behalf in trust for the Seller and shall not mingle such proceeds with other monies or pay them into an overdrawn bank account and shall keep the sale proceeds at all times identifiable as the Seller's monies until such time as such monies are paid to the Seller.

8.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

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- 8.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) become immediately due and payable.
- 9. WARRANTIES AND LIABILITY**
- 9.1 The Contract shall not constitute a sale or supply by description or sample.
- 9.2 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a Consumer (within the meaning of The Consumer Rights Act 2015), any conditions or warranties (whether express or implied by statute or common law or arising from conduct or previous course of dealing or trade custom or usage) as to the quality of the Goods and/or the services with any description or sample are hereby excluded to the full extent permitted by law.
- 9.3 In addition to clause 9.2 the attention of the Buyer is specifically drawn to the following exclusions:-
- 9.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer;
- 9.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), or technical manual, misuse or alteration or repair of the Goods without the Seller's approval;
- 9.3.3 the Seller shall be under no liability in respect of any part of the Goods or material used in the preparation of the Goods not manufactured by the Seller, and the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller;
- 9.3.4 the Seller shall be under no liability in respect of any defect in the Goods due to or arising out of the acts, omissions, negligence or default of the Buyer or the Buyer's employees, consultants, suppliers or agents including in particular (but without limitation) any failure by the Buyer to comply with any recommendations of the Seller as to the storage and handling of the Goods.
- 9.4 Where the Goods are sold by the Seller by way of a consumer transaction (as defined by the Consumer Rights Act 2015) the statutory rights of the Buyer are not affected by these Conditions.
- 9.5 Any claim by the Buyer which is based on any defect in the quality, quantity or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer and whether or not the defect or failure was apparent on reasonable inspection) be notified to the Seller within 3 days from date of actual delivery to or collection by or on behalf of the Buyer. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability whatsoever for such defect or failure and the Buyer shall be bound to pay the Price together with VAT and any carriage and packaging charges as if the Goods had been delivered in accordance with the Contract.
- 9.6 Where any valid claim, which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled at his discretion to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion, refund to the Buyer the Price of the Goods (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer SAVE THAT in the case of a defect discoverable before the Goods are laid the Seller shall be under no liability whatsoever to the Buyer in respect of any such defect if the Buyer has proceeded to lay the Goods.
- 9.7 Where any valid claim, which is based on short delivery, is notified to the Seller and the carrier in accordance with these Conditions, the Seller shall be entitled at its discretion to make good the difference or to credit the Buyer a proportion of the relevant invoice amount, but the Seller shall have no further liability to the Buyer and the Buyer shall not be entitled to reject the Goods or any part thereof by reason of such short delivery.
- For the avoidance of doubt, in relation to this clause the Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 5% more or less than the quantity of Goods ordered.
- 9.8 Any claim by the Buyer in respect of non-delivery of Goods must be notified to the Seller in Writing within ten days of the date of the Seller's invoice in respect of the Goods in question. If the Buyer does not notify the Seller in accordance with this clause 9.8 the Seller shall have no liability whatsoever for such failure, and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract. Where a valid claim in respect of non-delivery is notified in accordance with the provisions of this clause the Seller may at its absolute discretion deliver a replacement consignment of Goods or issue the Buyer with a credit note in respect of the invoice.
- 10. FORCE MAJEURE**
- 10.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations, in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-
- 10.1.1 act of god, explosion, flood, tempest, fire or accident;
- 10.1.2 war or threat of war, sabotage, interaction, civil disturbance or accident;
- 10.1.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 10.1.4 import or export regulations or embargoes;
- 10.1.5 strikes, lock-outs or other industrial action or trade disputes (whether involving employees of the Seller or of a third party);
- 10.1.6 difficulties in obtaining raw materials, labour, fuel, parts of machinery;
- 10.1.7 power failure or breakdown in machinery;
- 10.1.8 severe weather conditions.
- 11. HEALTH AND SAFETY**
- 11.1 It shall be the responsibility of the Buyer to take all necessary precautions for the health and safety of all persons handling or using the Goods. The Seller shall be under no obligation or liability whatsoever in this regard, and the Buyer shall keep the Seller indemnified against any claims, liability, damages, costs and expenses arising in respect of a failure on the part of the Buyer to take such precautions.
- 12. INDEMNITY**
- 12.1 The Buyer will indemnify and keep indemnified the Seller against all or any claims, actions, proceedings, and demands together with all costs, interest and other expenses (including fines, penalties, legal and other professional fees) incurred directly or indirectly in connection therewith in respect of:-
- 12.1.1 all or any infringements or alleged infringements of any intellectual property rights or other like claim whether in respect of a registered right or not, resulting from the Seller's compliance with the Buyer's express or implied instructions;
- 12.1.2 a failure by the Buyer to observe the Seller's instructions (whether oral or in Writing) relating in anyway whatsoever to the Goods.

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- 13.1 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- 13.1.1 the Buyer (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an "Insolvency Event");
- 13.1.2 the Buyer (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application or the giving of any notice) by him or any other person in respect of any of these circumstances (also an "Insolvency Event") (or, the Buyer being a partnership, has a partner to whom any Insolvency Event applies); or
- 13.1.3 the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 13.2 If this clause 13 applies then, without prejudice to or any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. CONSEQUENTIAL LOSS

- 14.1 Nothing in these conditions shall exclude either party's liability for death or personal injury arising from its negligence or for fraud.
- 14.2 Subject to clause 14.1, the Seller shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for any indirect, special, consequential or pure economic loss or damage; any loss of profits, anticipated profits, revenue or business opportunities; or damage to goodwill (in each case arising as a direct or indirect result of the relevant claim)
- 14.3 Subject to clause 14.1, the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price.

15. EXPORT TERMS

- 15.1 In these Conditions "Incoterms" means the International Rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the Contract otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 15.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 15 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 15.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties thereon.
- 15.4 The Buyer shall satisfy itself that the Goods do, and the Seller shall accept no liability in the event that the Goods do not conform with the laws and regulations of the country to which the Goods are being exported.
- 15.5 Unless otherwise agreed in Writing between the Buyer and the Seller the Goods shall be delivered F.C.A. the Air or Sea Port of Shipment and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 15.6 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during or after transit.
- 15.7 Notwithstanding the provisions of clause 8 the risk in Goods to be exported shall pass to the Buyer forthwith upon such Goods leaving the Seller's premises.

16. REPRESENTATIONS

- 16.1 No date, description, information, warranty condition or recommendation contained in any catalogue, price list, advertisement, or other written communication or made orally by any agents or employees of the Seller shall be construed to enlarge, vary, or override in any way, any of these Conditions.

17. TERMINATION

- 17.1 Save as otherwise provided in these Conditions, the Contract may not be terminated or cancelled except by agreement in Writing of both the Buyer and the Seller and upon payment to the Seller of such amounts as may be necessary to indemnify the Seller against all reasonable loss resulting.

18. GENERAL

- 18.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 18.2 Save for a "subsidiary" or "holding company" of the Seller, no one other than a party to the Contract shall have any right to enforce any of its terms.
- 18.3 No waiver by the Seller of any breach of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.4 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Conditions.
- 18.6 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Conditions without the prior written consent of the Seller.
- 18.7 If any provision of these Conditions is held by any Court to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 18.8 These Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England
- 18.9 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or its subject matter or formation (including non-contractual disputes or claims).